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THE  
ANNOTATED CORPORATION LAWS  
OF  
ALL THE STATES

GENERALLY APPLICABLE TO STOCK CORPORATIONS

INCLUDING

Statutes and Constitutional Provisions relating to Receivers, Practice,  
Taxation, Trusts and Combinations, Labor, and Crimes  
by Corporations and their Officers.

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IN THREE VOLUMES.

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COMPILED AND EDITED BY

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OF THE ALBANY, N. Y., BAR.

VOL. I.

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# INTRODUCTORY NOTE.

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In addition to the general statutes providing for the creation, management and liabilities of stock corporations, the provisions of the constitutions and statutes of the several States relating to the following subjects are included:

1. The appointment and powers and duties of receivers on dissolution or in insolvency.

2. Actions against corporations and their officers in the nature of quo warranto.

3. The duties of employers in respect to their employes, including liabilities of stockholders for wages, factory regulations and other kindred subjects.

4. Taxation of the property, earnings and franchises of corporations.

5. Practice in actions by or against corporations, including the commencement of actions, pleadings, attachments, executions, enforcement of stockholders' and directors' liabilities, etc.

6. Restrictions and limitations upon the creation and operation of trusts or combines for the regulation of trade, fixing of prices of commodities and prevention of competition.

7. Punishments for frauds and malfeasance of corporations and their officers and agents.

The character of this work will declare itself by a cursory examination. In this prefatory note it is only necessary to call attention to some of its distinguishing features.

It has not been attempted to include the statutes of the several States which are exclusively applicable to special classes of corporations. The scope of the work is confined to those statutes which are generally applicable to all stock corporations. This includes, however, all general statutes providing for the creation and management of corporations for ordinary business purposes.

The statutes are not digested. They are included verbatim. The arrangement of the statutes, for convenience of reference, is made to conform to the official editions of the statutes of the several States. At the end of each State are appended the several acts, in chronological order, which have been passed since the enactment of the official edition. Such parts of the several State Constitutions as relate to the rights, powers, duties and limitations of stock corporations and their officers and stockholders are inserted in full. One of the important objects of this work is to enable corporations seeking to do business

outside of the State of their domicile to know what their duties, powers and liabilities are in other States. To accomplish this, especial attention has been given to the statutes relative to foreign corporations.

All of these statutes are as amended and in force on January 1, 1899.

Notes are inserted at the end of each section of the statutes, containing cross references to other provisions of the statutes of the State which refer or relate to a similar subject. All of the leading cases decided by the Appellate Courts of the several States which construe or are applicable to any part of the statutes included, are digested and inserted in connection with the provisions of the statute to which they relate.

The statutes of each State are separately treated, with a complete and carefully prepared index added at the end of each State. This arrangement seems best for convenience of use.

The compiling of these statutes has been a task of no small dimensions. Every possible precaution has been taken to secure accuracy, with the realization that the value of the work depends upon its reliability and convenience of use. The search for statutes bearing upon corporations and decisions construing such statutes has necessitated the perusal and careful examination of hundreds of volumes. The editors have had at their disposal the most excellent facilities of the New York State Library, and have been assisted from time to time by the courtesy of the secretaries of state and attorneys-general of the several States. While it would be fool-hardy to claim for a work of this character absolute perfection and accuracy, the editors are confident that its accuracy and completeness can be relied on, and are hopeful that corporations, attorneys and others interested in extended corporate transactions will find it of practical use and value.







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ALABAMA.

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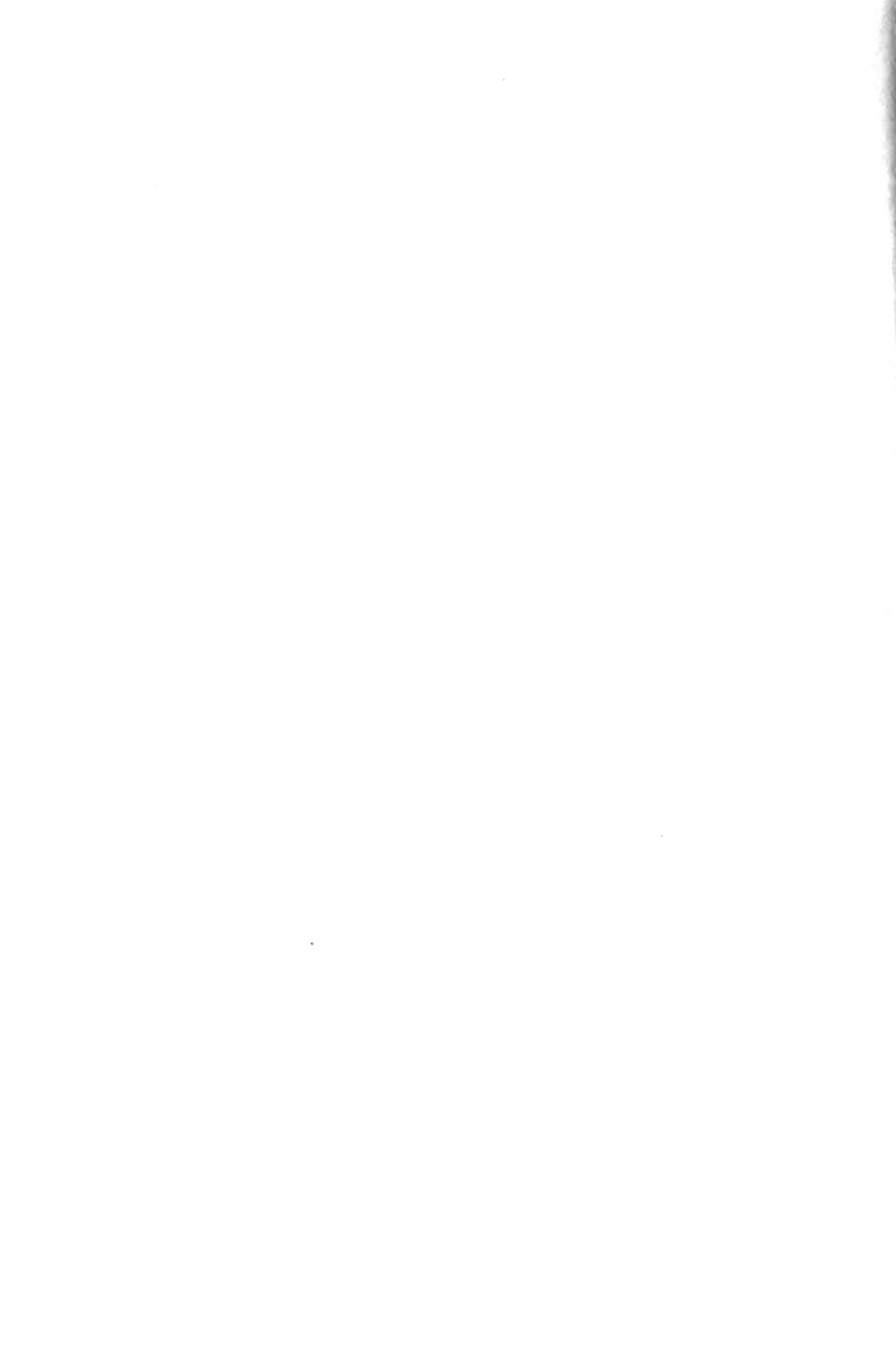
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# ALABAMA.

## CONSTITUTION OF ALABAMA — 1875.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Declaration of Rights.

- Sec. 23. Laws impairing the obligation of contracts or making irrevocable grants of privileges, prohibited.
24. Private property not to be taken for public use without compensation.

#### ARTICLE IV.

##### Legislative Department.

- Sec. 23. Special laws for benefit of corporations prohibited.
24. No local or special law shall be passed, unless, etc.
25. General assembly shall pass general laws for protection of local and private interests.
35. Trust funds not to be invested in bonds or stock of any private corporation.
54. State shall not lend its money or credit to any corporation.
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#### ARTICLE XI.

##### Taxation.

- Sec. 2. Power to levy taxes shall not be delegated to private corporations.
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#### ARTICLE XIV.

##### Private Corporations.

- Sec. 1. How corporations may be formed. Laws that may be altered, amended or repealed.
2. In regard to validity of existing charters or grants.
3. Power of general assembly to remit the forfeiture of the charter of any existing corporation.
4. Requirements of foreign corporation.
5. Corporation not to engage in any business not authorized by its charter.
6. No corporation shall issue stock or bonds except for value. Piercious increase of stock or indebtedness shall be void.

- Sec. 7. Private property taken for public use. Right to appeal from an assessment.
8. How dues from private corporations shall be secured. Individual liability of stockholders.
9. The issue of preferred stock by corporations.
10. Power of general assembly to alter, revoke or amend any charter of incorporation now existing.
11. Rights of telegraph companies.
12. All corporations shall have the right to sue and be sued.
13. "Corporation" defined.

#### ARTICLE I.

##### Declaration of Rights.

§ 23. No ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grants of special privileges or immunities, shall be passed by the general assembly.

Corporate property shall forever be taxed. Art. XI, § 6. All laws creating corporations are subject to repeal. Art. XIV, §§ 1, 10. Actions to vacate charters. Statutes, §§ 3167 et seq.

[An act of the general assembly incorporating a company with authority to construct a toll bridge, is a contract which cannot be impaired. *Mason v. Bridge Co.*, 47 Ala. 652.

The test of the power of the legislature to confer franchises on particular individuals is whether the privilege conduces to public good and is such as must be committed to a few in order to be available. *Hoarst v. Moses*, 48 Ala. 129.

Whenever the State grants a charter of incorporation the presumption is that an equivalent is received — that the grant is not without a quid pro quo. *Aldridge v. R. R. Co.*, Stew. & Port. 199. Therefore the grant is a contract, into which the State enters in consideration of public benefit received or expected to accrue. *Daughdrill v. Ins. & Tr. Co.*, 31 Ala. 91; *Logwood v. Bank*, Minor, 23; *State v. Bank*, 2 Stew. 39; *Jemison v. Bank*, 23 Ala. 168.

A statute which declares a forfeiture of a charter, with consent of the company, does not impair the obligation of a contract. *R. R. Co. v. State*, 29 Ala. 573.

The legislature cannot deprive creditors of a corporation of their rights under the charter. *R. R. Co. v. Branch*, 59 Ala. 139; s. c., 6 Am. Corp. Cas. 136.

Where a law when a corporation is formed exacts certain duties of it, and subsequent statutes imposing a penalty, where none existed before, for failure to perform such duties, does not impair any



corporate right or otherwise violate the Constitution. *Ry. Co. v. Stelmer*, 61 Ala. 559.

Charter by a private corporation, when accepted, is an executed contract between a State and the corporators, and within the protection of the constitutional provision, State and Federal, against laws impairing obligation of contracts. *R. R. Co. v. Kennerly*, 74 Ala. 566.

But a corporation takes nothing by its charter, except what is plainly, expressly, and unequivocally granted, or necessarily implied; and in all things else the State may exercise over it full and implied powers as over individual. *Id.* Repeal of general corporation; effect as to corporations formed thereunder. *Bibb v. Hall*, 101 Ala. 79; *s. c.*, 14 So. Rep. 88; *Kahn v. Hall*, 101 Ala. 102; *s. c.*, 14 So. Rep. 105.]

§ 24. That the exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the general assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as individuals. But private property shall not be taken or applied for public use, unless just compensation be first made therefor; nor shall private property be taken for private use, or for the use of corporations, other than municipal, without the consent of the owner: Provided, however, That the general assembly may, by law, secure to persons or corporations the right of way over the lands of other persons or corporations, and by general laws provide for and regulate the exercise by persons and corporations of the rights herein reserved; but just compensation shall, in all cases, be first made to the owner; And provided, That the right of eminent domain shall not be so construed as to allow taxation or forced subscriptions for the benefit of railroads or any other kind of corporations other than municipal, or for the benefit of any individual or association.

See Art. XIV, § 7.

[Principle upon which court of equity proceeds in interfering to prevent corporations invested with right of eminent domain from entering upon lands. *R. R. Co. v. R. R. Co.*, 75 Ala. 275. The power of condemnation can only be exercised by the general assembly, and is not conferred on the courts by general statutory provisions requiring the taking of private property for public use. *R. R. Co. v. R. R. Co.*, 82 Ala. 297; *s. c.*, 2 So. Rep. 710.]

## ARTICLE IV.

### Legislative Department.

§ 23. No special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided for by a general law, or where the relief sought can be given by any court of this State; nor shall the operation of any general law be suspended by the general assembly for the benefit of any individual, corporation or association.

See §§ 24, 25, post. Corporations must be created by general laws, Art. XIV, § 1.

§ 24. No local or special law shall be passed, on a subject which cannot be provided for by a general law, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated; which notice shall be at least twenty days prior to the introduction into the general assembly of such bill, and the evidence of such notice having been given shall be exhibited to the general assembly before such bill shall be passed; Provided, That the provisions of this Constitution, as to special or local laws, shall not apply to public or educational institutions of or in this State, nor to industrial, mining, immigration, or manufacturing corporations or interests, or corporations for constructing canals, or improving navigable rivers or harbors of this State.

See preceding section, and cross-references.

§ 25. The general assembly shall pass general laws, under which local and private interests shall be provided for and protected.

See § 23, ante, and cross-references.

§ 35. No act of the general assembly shall authorize the investment of any trust fund by executors, administrators, guardians, and other trustees, in the bonds or stock of any private corporation; and any such acts now existing are avoided, saving investments heretofore made.

§ 54. The State shall not engage in works of internal improvement, nor lend money or its credit in aid of such; nor shall the State be interested in any private or corporate enterprise, or lend money or its credit to any individual, association or corporation.

See § 55, post.

§ 55. The general assembly shall have no power to authorize any county, city, town, or other subdivision of this State, to lend its credit, or to grant public money or thing of value, in aid of, or to any individual, association or corporation whatsoever or to become a stockholder in any such corporation, association or company, by issuing bonds, or otherwise.

See § 54, ante.

## ARTICLE XI.

### Taxation.

§ 2. No power to levy taxes shall be delegated to individuals or private corporations.

§ 6. The property of private corporations, associations and individuals in this State shall forever be taxed at the same rate;

## Private corporations — Const., Art. xiv, §§ 1-4.

Provided, This section shall not apply to institutions or enterprises devoted exclusively to religious, educational or charitable purposes.

See Code, §§ 3306 et seq.

[Any exemption from taxation, total or partial, claimed by a private corporation under its charter, or act of incorporation, the courts require that the legislative intent to confer such exemption shall be expressed in clear and unambiguous terms; and if there is a just and reasonable doubt as to such intent, it is resolved against the corporation. *R. E. Co. v. Kennerly*, 74 Ala. 566.]

The Constitution does not authorize the legislature to prescribe an arbitrary and artificial value of the property of corporations, and assess taxes on such valuation. *Board of Assessment v. R. R. Co.*, 59 Ala. 551. National banks are not subject to State taxes, except in so far as Congress authorizes it, but shares in such banks are subject to State taxation against the individual holders. *Sumter Co. v. Bank*, 62 Ala. 464.]

## ARTICLE XIV.

## Private Corporations.

§ 1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal, manufacturing, mining, immigration, industrial and educational purposes, or for constructing canals, or improving navigable rivers and harbors of this State, and in cases where, in the judgment of the general assembly, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered, amended or repealed.

Laws impairing obligation of contracts, prohibited. Art. I, § 23. Special laws prohibited. Art. IV, §§ 23, 24, 25. General laws for creation of corporations. Code, §§ 1251 et seq.

[Exercise of the privileges granted by charter, will be almost conclusive evidence of acceptance. *Ins. Co. v. Landers*, 43 Ala. 115. So also of amendment to charter. *R. R. Co. v. Bingham*, 5 Ala. 657.]

The test of the power of the legislature to confer franchises on particular individuals is, whether the privilege conduces to public good, and is such as must be committed to the few in order to be available. *Horst v. Moses*, 48 Ala. 129. Statute held valid under above section. *A. & M. Assn. v. Ins. Co.*, 70 Ala. 121.]

§ 2. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith, at the time of the ratification of this Constitution, shall thereafter have no validity.

Existing charters may be altered or revoked. § 10, post. Forfeiture for nonuser. Code, § 1273. Actions to vacate charters. Code, §§ 3417 et seq.

§ 3. The general assembly shall not remit the forfeiture of the charter of any corpora-

tion now existing, or alter or amend the same, or pass any general or special law for the benefit of such corporation, other than in execution of a trust created by law or by contract, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

[See *State v. Light Co.*, 15 So. Rep. 347.]

§ 4. No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein; and such corporation may be sued in any county where it does business by service of process upon an agent anywhere in this State.

Attachments against foreign corporation, § 535. Requirements of foreign corporations to do business. See §§ 1316 et seq.

[What is sufficient compliance with requirements of this section. *Security Co. v. Ingram*, 91 Ala. 337; s. c., 9 So. Rep. 140. A corporation chartered in one State for any purpose may lawfully make a contract in furtherance of that purpose in any other State; laws do not prohibit such contracts. *Hall v. Engine Co.*, 91 Ala. 363.]

A foreign corporation doing business in this State through a managing agent or employe, may be sued by summons and complaint, served on such agent or employe, upon a cause of action which accrued in the State. *Tel. Co. v. Pleasants*, 46 Ala. 641.

A foreign corporation is entitled to sue in courts of this State. *Eslava v. Plow Co.*, 47 Ala. 384. "A corporate body duly incorporated by the laws of Massachusetts," is sufficient description. *Id.*

As a general rule, a foreign corporation may prosecute a suit in the courts of this State, whenever the individual corporators would be permitted to do so; though the court may withdraw its aid, on clear proof of the treacherable character of the corporation. *I. & E. Co. v. Locke*, 50 Ala. 332; s. c., 5 Am. Corp. Cas. 135.

Corporations created by other States may, within this State, make any contract which they have capacity to make, unless prohibited by our laws. *Mayor v. Rogers*, 10 Ala. 37.

A foreign corporation seeking enforcement of a contract made here, must show that it had capacity to make the contract. *Morris v. Hall*, 41 Ala. 510. A foreign corporation has the right of suit in courts of this State. *Lucas v. Bank*, 2 Stew. 147. A foreign corporation exercising any of its corporate functions by comity of this State within its limits, must conform to our laws. A prohibition in its charter against taking more than a prescribed rate of interest, will not affect a contract made in this State, payable here. *Admr. v. Bank*, 7 Ala. 386.

As a general rule, a foreign corporation may, with safety and propriety, be allowed to prosecute a suit when corporators, themselves, would be permitted to do so. *Im. & Ex. Co. v. Locke*, 50 Ala. 332; s. c., 5 Am. Corp. Cas. 135. A foreign corporation, having a known place of business here, and an authorized agent upon whom process can be served, may plead statute of limitations in like manner as a domestic corporation. *Huss v. C. R. & B. Co.*, 66 Ala. 472. The above provision of the Constitution art. XIV, § 4 is not in conflict with any act of Congress or the Federal Constitution. *A. U. Tel. Co. v. W. U. Tel. Co.*, 67 Ala. 26; s. c., 6 Am. Corp. Cas. 186. And equity will not aid by injunction any corporation which does not show in its plea that it has complied with this constitutional provision. *Id.* Above provision construed. *Beard v. Pub. Co.*, 71 Ala. 60. A corporation can have no legal existence beyond the territorial boundaries of the sovereignty by which

## Private corporations; foreign — Const., Art. xiv, § 5.

It is created, and can transact business in other sovereignties only upon such terms and conditions as such sovereignties may provide. *Ins. Co. v. Kamper*, 73 Ala. 325.

When special act creates a corporation and not merely confers on a foreign corporation a license to transact business. *Id.*

A corporation chartered under the laws of another State necessarily has its residence there, and cannot exercise powers in Alabama except by comity. *R. & B. Co. v. Carr*, 76 Ala. 388; s. c., 10 Am. Corp. Cas. 35. But corporation operated under charter procured from each of two States has a legal residence in each of the States. *Id.* This section does not authorize suits against foreign corporation except on causes of action originating here, or on contracts entered into with reference to a subject-matter within the State. *Id.*

A corporation has its domicile, as to debts contracted by it, in State by which its charter was granted; but may subject itself to suit in another State by appointment of an agent upon whom process may be legally served. *Soc. v. Vogel*, 76 Ala. 441.

This section does not render void a contract made by a corporation which has not complied with its terms; and the other party to the contract, having received the benefits, cannot be heard to question the capacity of the corporation on this account to make it. *Sherwood v. Alvis*, 83 Ala. 115; s. c., 3 So. Rep. 307.

Suit by foreign corporation; necessary proof of corporate existence. *Savage v. Russell*, 84 Ala. 103; s. c., 4 So. Rep. 235.

Under Alabama Code court of equity has no jurisdiction to enforce specific performance of a contract made with a foreign corporation, or to prevent its breach by process of injunction against residents, when contracts relate to personal services only, and it is not alleged that it was made in Alabama, or that it was to be performed there. *Pub. Co. v. Tel. Co.*, 83 Ala. 498; s. c., 3 So. Rep. 449.

Agent of a foreign corporation which has not complied with conditions imposed by above section of Constitution, cannot maintain an action to recover compensation. *Dudley v. Collier*, 87 Ala. 431; s. c., 6 So. Rep. 394.

Above section prohibits the making of a single contract or the doing of a single act of business, by such foreign corporation, as well as engaging in or carrying on its business generally. *Farrlor v. Security Co.*, 88 Ala. 275; s. c., 7 So. Rep. 200. Under this provision a contract made with a foreign corporation, and fully executed, cannot be afterward assailed by party who receives the benefits of it; but, so long as contract remains executory, courts will not enforce it at instance of either party. *Id.* A bill to foreclose mortgage given to a foreign corporation, and executed in this State, must affirmatively show that, when contract was made, the corporation had an authorized agent and known place of business in this State. *Mullens v. Morig*, Co., 88 Ala. 280; s. c., 7 So. Rep. 201.

Person who made contract with a foreign corporation prior to the passage of act approved February 28, 1887, received benefits thereof, and suffered it to be executed, cannot then be heard to assail its validity on account of failure of corporation to comply with art. XIV, § 4, of Constitution. *Cradlock v. Morig*, Co., 88 Ala. 282. In bill filed by foreign corporation to foreclose mortgage, or to enforce any other contract, compliance with art. XIV, § 4, must be alleged, as essential to right to relief; otherwise, fact of noncompliance is matter of defense, and must be taken by plea or answer. *Christian v. Morig*, Co., 80 Ala. 198. An alien corporation having complied with this provision (art. XIV, § 4) may own land, or take mortgage on land here. *Id.*

A foreign corporation may litigate in Alabama without complying with constitutional and statutory provisions and regulating its right to do business here. *Id.*

In bill to foreclose mortgage, filed by foreign corporation, or its receiver, not necessary to aver or show affirmatively that corporation had capacity to make the contract, the onus of showing its invalidity being on party who assails it. *Boulware v. Davis*, 90 Ala. 207; s. c., 8 So. Rep. 84.

When foreign corporation files bill in equity to

enforce contract made here, it should allege compliance with constitutional and statutory provisions requiring known place of business and an authorized agent; but the want of such an averment is only a ground of demurrer, and is waived if not so taken. *Ginn v. Security Co.*, 92 Ala. 135; s. c., 9 So. Rep. 388.

In the matter of contracts corporations are not within art. IV, § 2, of Federal Constitution, but are dependent on laws of the State for privilege of doing business within its limits; yet contracts of foreign corporation with a citizen are subject to constitutional power of Congress to regulate commerce among the several States, and contracts within scope of that power are not subject to restrictions imposed by State laws. *Ware v. Shoe Co.*, 92 Ala. 145; s. c., 9 So. Rep. 136; *Nelms v. Morig*, Co., 92 Ala. 157; s. c., 9 So. Rep. 141.

This provision has no reference to extent of agent's authority, but is only intended to provide for the institution of suits and service of process. *Id.*

When foreign corporation files a bill to foreclose mortgage given for money loaned, averring compliance with constitutional and statutory provisions as to resident agents and known place of business, not necessary to also allege corporation's power to loan money. *Id.*

Making a loan of money in Alabama, secured by note and mortgage of land, is "doing business" within the meaning of constitutional and statutory provisions, and is not a matter of interstate commerce. *Id.*; *Ginn v. Sec. Co.*, *Id.* 135. But the institution and prosecution of a suit is not. *Id.*; *Cook v. Brick Co.*, 98 Ala. 409; s. c., 12 So. Rep. 918; *McCall v. Morig*, Co., 99 Ala. 427; s. c., 12 So. Rep. 806. What is a proper compliance with laws as to foreign corporation filing declaration in office of secretary of State and distinguishing person as agent. *Falls v. Bldg. Co.*, 97 Ala. 417; s. c., 13 So. Rep. 25.

The sale of brick in another State, delivered in Alabama, is an act of interstate commerce, which is not affected by laws of Alabama, requiring foreign corporation to have place of business and an agent in State. *Cook v. Brick Co.*, 98 Ala. 409; s. c., 12 So. Rep. 918. The single act of making a loan and taking mortgage security therefor by a foreign corporation on land in this State, is the doing of business within the prohibition of above section of Constitution. *State v. Bank*, 18 So. Rep. 533. Requisites of agent under above section of Constitution. *McCall v. Mortgage Co.*, 99 Ala. 427; s. c., 12 So. Rep. 806. Action against foreign railroad company; when property brought in this State. *R. R. Co. v. Trousdale*, 99 Ala. 389; s. c., 13 So. Rep. 23.]

§ 5. No corporation shall engage in any business other than that expressly authorized in its charter.

Powers in general. Code, § 1256. General purposes must be stated in declaration. § 1252.

[Corporations can only exercise the powers which are expressly granted to them, such implied powers as are necessary and proper to carry into effect the powers expressly granted, and such incidental powers as pertain to the purposes for which the corporation was created. *Livingston v. Pippin*, 31 Ala. 542; *Montgomery v. Plankroad Co.*, *Id.* 76; *Ex parte Burnett*, 30 *Id.* 461; *Lodge v. Waddill*, 36 *Id.* 313; *Morris v. Hall*, 41 *Id.* 510; *Smith v. Ins. & Tr. Co.*, 4 *Id.* 538; *State v. Mayor*, 5 *Port*, 279; *State v. Stebbins*, 1 *Stew.* 290.

Grants of power to corporations, unlike grants of individuals, are to be strictly construed in favor of the government and against the grantee. Corporations can claim nothing that is not clearly given. Ambiguities operate against them. *Lodge v. Waddill*, 36 Ala. 313; *Powell v. Sammons*, 31 *Id.* 552. A corporation is clothed with power to do all acts necessary and proper to carry into effect the purposes of its creation, and when necessary to accomplish such purpose, may appoint agents. *R. R. Co. v. Kild*, 20 Ala. 221. A cor-

## Private corporations; stock; eminent domain — Const., Art. xiv, §§ 6, 7.

poration can make no contract which is not necessary, directly or indirectly, to serve the purpose of its creation; nor can it apply its funds to any purpose which is not within the legitimate purposes for which it was created. *Montgomery v. Plankroad Co.*, 31 Ala. 762; *Morris v. Hall*, 41 id. 510; *Smith v. Ins. & Tr. Co.*, 4 id. 558.

Contracts of corporation which it has no power to make are void, and courts will not enforce them. So also promissory notes and other instruments given to secure performance of contract are void. *Lodge v. Waddill*, 36 Ala. 312; *Smith v. Ins. & Tr. Co.*, 4 id. 558. Agent of a corporation who contracts a debt for it which it has no power to contract, is made personally liable thereby. *Drake v. Flewellen*, 33 Ala. 106; *Hurwood v. Humes*, 9 id. 659.

Prima facie no presumption of illegality, abuse or excess of corporate powers attaches to corporate contracts, and the burden of showing their invalidity rests on him who assails them. *Ins. Co. v. A. & M. Assn.*, 54 Ala. 73; s. c., 6 Am. Corp. Cas. 109.

One dealing with a corporation in matters not following within the purview of its delegated powers, is not thereby estopped from pleading its want of authority to make the contract sought to be enforced against him. *Bank v. Dunklin*, 54 Ala. 471; s. c., 6 Am. Corp. Cas. 113. Otherwise, if the contract is within the delegated powers. *Id.*; *Pond v. Bldg. Assn.*, 61 Ala. 232.

A person who has made a contract with a corporation which is ultra vires, though he has received the benefit of it, is not estopped from setting up its invalidity. *Chambers v. Falkner*, 65 Ala. 449; s. c., 6 Am. Corp. Cas. 182. When corporation has no power to lend money, a promissory note given to it for borrowed money, and a mortgage to secure such note, are both void, and cannot be enforced in equity. *Id.*

As to whether party who contracts with a corporation thereby estops himself from denying power of corporation to make such contracts, the decided cases are conflicting. *Wilkes v. R. R. Co.*, 79 Ala. 180.

A contract made by or with a corporation, if ultra vires, cannot be enforced, and the other party is not estopped from setting up its invalidity; but, if the contract is not ultra vires, he is estopped from disputing the regular and complete organization of the corporation. *Sheworth v. Alvis*, 83 Ala. 115; s. c., 3 So. Rep. 397. A corporation which has received benefits of a contract ultra vires is not thereby estopped from setting up the invalidity. *Lime Works v. Dismukes*, 87 Ala. 344; s. c., 6 So. Rep. 122. Corporation organized to mine and manufacture lime rock has no incidental power to carry on a mercantile business. *Id.* If organized under general statutes, for purpose of manufacturing and selling machinery, it has no power, express or implied, to engage in business of manufacturing, buying or selling ice. *Simmons v. Iron Works*, 92 Ala. 427; s. c., 9 So. Rep. 169.

Construction and interpretation of charter and by-laws is a question of law for the court; but determining nature of business and property, and usage of that business, and extent of powers conferred on agents, are questions of fact for the jury. *Transp. Co. v. Kavanaugh*, 133 Ala. 324; s. c., 9 So. Rep. 335.

Authority and powers of corporation engaged in river navigation. *Id.* Plea of ultra vires no defense to suit, when. *Bank v. Roden*, 97 Ala. 404; s. c., 11 So. Rep. 883.]

§ 6. No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general laws, nor without the consent of the persons holding the larger amount in value of stock, first obtained at a meeting to be held after

thirty days' notice is given in pursuance of law.

Issue of preferred stock. § 9, post. Capital stock, how increased. Code, §§ 1154, 1259, 1270. Preference to prior stockholders in issue of increase. Code, § 1272. Subscriptions to stock must be payable in money. § 1254.

[See *Fitzpatrick v. Pub. Co.*, 83 Ala. 604; s. c., 2 So. Rep. 727. Fictitious stock in private corporation is illegal and void under above constitutional provision. *Williams v. Evans*, 87 Ala. 725; s. c., 6 So. Rep. 702.

Fictitious or fraudulent issue of stock; who may assail. *Parsons v. Joseph*, 92 Ala. 403; s. c., 8 So. Rep. 788. Stockholder participating in fictitious issue of stock, or other fraudulent act, is estopped from assailing its validity; but estoppel is not binding on innocent transferee of the stock. *Id.*

A pledge by private corporation of its bonds, secured by mortgage of property, if made without fraud and solely for bona fide purpose of securing payment of a debt owing by corporation, is not a violation of this provision. *Nelson v. Hubbard*; *Cotton Mills v. Dimmick*, 96 Ala. 238; s. c., 11 So. Rep. 428. Provisions of above section are requirements for benefit of stockholders, and compliance therewith may be waived by them. *Id.*

Certificates of stock issued on fictitious increase of capital stock, void. *Reitman v. Steiner*, 98 Ala. 241; s. c., 13 So. Rep. 87. But the law does not avoid the entire issue, but the vitiating operation of the constitution is confined to the fictitious excess. *Id.* Risk of liability voluntarily increased by purchase of certificates issued in excess of capital. *Id.*

An original issue of shares of stock as paid up, at less than their nominal value, is in violation of law, against public policy, and violative of constitutional provisions. *Ferry v. Mill Co.*, 93 Ala. 364; s. c., 9 So. Rep. 217.

Mortgage bonds of a face value in excess of the debt, issued as collateral, held not a fictitious issue. *Dexter v. McChellan*, 22 So. Rep. 451.]

§ 7. Municipal and other corporations and individuals invested with the privilege of taking private property, for public use, shall make just compensation for the property taken, injured, or destroyed by the construction or enlargement of its works, highways, or improvements, which compensation shall be paid before such taking, injury, or destruction. The general assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers, or otherwise; and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury according to law.

See art. I, § 24.

[Above section should be liberally construed in favor of the citizen. *Montgomery v. Townsend*, 80 Ala. 489; *Ry. Co. v. Witherow*, 82 id. 199; s. c., 3 So. Rep. 23. It was intended to secure a just compensation to owner of property taken, and to compel its payment before the appropriation was complete; also, to secure the right of appeal from the preliminary assessment of damages, without regard to the character of the tribunal or body by which the assessment may be made; and the right to a trial by jury, on the demand of either party, when the error or matter complained of is the amount of damages assessed. *Sayre v. Ry. Co.*, 72 Ala. 443.]

§ 8. Dues from private corporations shall be secured by such means as may be prescribed by law; but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her.

Proceedings by judgment creditor of corporation. Code, § 2182.

[See *Chamberlin v. Bromberg*, 83 Ala. 576; s. c., 3 So. Rep. 434.

Liability of stockholders, or subscribers for stock, is governed by law of State by which charter is granted, as if incorporated in the subscription as part thereof. *Morris v. Glenn*, 87 Ala. 628; s. c., 7 So. Rep. 90. Liability of transferrer of stock under statutes of Virginia. *Id.*]

§ 9. No corporation shall issue preferred stock without the consent of the owners of two-thirds of the stock of said corporation.

Fleeting increase of stock prohibited. § 6, ante, and cross-references.

§ 10. The general assembly shall have the power to alter, revoke, or amend any charter of incorporation now existing, and revocable at the ratification of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this State; in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew, or extend the charter of more than one corporation.

See art. I, § 23; art. XIV, § 1.

§ 11. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and connect the same with other lines; and the

general assembly shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in the stock or bonds of any other telegraph company owning a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph.

§ 12. All corporations shall have the right to sue, and shall be subject to be sued in all courts, in like cases as natural persons.

See Code, § 1256, and note. Foreign corporation may be sued, *how*. Const., art. XIV, § 4.

[This provision forbids unjust and odious discriminations against corporations, under the form and guise of laws regulating judicial procedure; but it has no reference to venue in civil actions, which belong only to the remedy or form of procedure; and it does not inhibit the passage of a general law authorizing a corporation to be sued in any county in which it transacts business through its agents, though an individual license can only be used in the county of his residence. *Home Protection v. Richards*, 74 Ala. 487. This provision must mean that where the cases are alike, there must be no discrimination between corporations and natural persons in the matter of prosecuting or defending suits. *Smith v. R. R. Co.*, 75 Ala. 449. "The American Mortgage Co. of Scotland" and "The American Mortgage Co." are *prima facie* different corporations; and an assessment of taxes against the latter will not support an action against an agent of the former. *State v. Sloss*, 87 Ala. 119; s. c., 6 So. Rep. 309.]

§ 13. The term "corporation," as used in this article, shall be construed to include all joint-stock companies, or any associations having any of the powers or privileges of corporations, not possessed by individuals or partnerships.

"Person" includes corporations, Code, §§ 1, 3306.

[Corporation defined. *Paschall v. Whitsett*, 11 Ala. 472; *R. R. Co. v. Kidd*, 29 *Id.* 221.

No particular words or expressions are essential to the creation of a corporation. *Ins. Co. v. Kamper*, 73 Ala. 325; s. c., 19 Am. Corp. Cas. 21.]



## THE CODE OF ALABAMA.

## The Civil Code.

## CHAPTER I.

## General Provisions Applicable to the Whole Code.

## Sec. 1. Signification of words.

§ 1. \* \* \* The word "person" includes a corporation as well as a natural person;  
\* \* \* \* \*

"Corporation" defined. Const., art. XIV, § 13.  
See § 3906.

["Person" includes not only natural but artificial persons, unless such an interpretation renders the statute inharmonious. *Selma v. Mullen*, 46 Ala. 411; *Mayor v. Rowland*, 26 Id. 498.

Punctuation marks have no controlling influence in construing statutes. *Danzy v. State*, 68 Ala. 296; *Cook v. State*, 110 Id. 40; s. c., 20 So. Rep. 360.]

## CHAPTER II.

## Attachment.

## ARTICLE I. ISSUE OF ATTACHMENTS.

Sec. 533. Corporations may sue out attachment.  
534. Security for costs, how given.  
535. Foreign corporations, attachment against.  
539. Provisions of chapter applicable to private corporations.

§ 533. Corporations, either foreign or domestic, are entitled to process of attachment for the recovery of the debts or ascertained demands due them, the president, cashier of the corporation, or an agent or attorney thereof, making the affidavit and executing bond as in other cases.

See § 1256, subd. 2, note. Execution may be issued against shares of stock in a corporation. See §§ 1266, 1267.

§ 534. When an attachment is sued out in favor of a non-resident, or a foreign corporation, security for the costs of the suit may be taken and approved by the officer issuing the same, or may be indorsed with his approval on the attachment.

§ 535. Process of attachment may issue against foreign corporations, having property in this State, for the recovery of debts, or to recover damages for a breach of contract when the damages are not certain or liquidated, or in cases where the action sounds in damages merely, in the same manner, and subject to the same rules as in

case of natural persons residing without this State.

Requirements of foreign corporations. Const., art. XIV, § 4.

[The affidavit need not state that the corporation against which the attachment is sought is a domestic one. *Central M. & M. Co. v. Stoven*, 45 Ala. 594.]

§ 539. The provisions of this chapter are applicable to all private corporations, and all affidavits or answers, required to be made under any of its provisions, may be made by the president, cashier, secretary, or any other duly authorized agent of such corporation; and such corporation may do and be dealt with under its provisions, in the same manner as if they were natural persons.

## CHAPTER XXVIII.

## Corporations.

Art. 5. Mining, quarrying and manufacturing companies.  
11. Corporations not specially provided for.  
12. General provisions.  
13. Charter fees required of domestic corporations.  
14. Dissolution of business corporations.  
16. Conditions upon which foreign corporations may do business in this State.

## ARTICLE V. MINING, QUARRYING AND MANUFACTURING CORPORATIONS.

Sec. 1139. Corporations may be formed.  
1140. Declaration filed in court of probate; contents.  
1141. Commission issued by judge of probate.  
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1143. Organization.  
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1146. Crossing public roads, streets, navigable waters.  
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1149. Consolidation, how consummated.  
1150. Name of charter of new corporation; changes.  
1151. Property, rights and liabilities of new corporation; pending suits.  
1152. Board of directors; election; powers.  
1153. Stockholders meet annually.  
1154. Increase of capital stock.  
1155. Provisions applicable to corporations organized under special charter.

§ 1139. Two or more persons, associating for the purpose of mining, quarrying, or manufacturing, may form themselves into a corporation, in the mode, and having the capacity and powers in this article expressed.

See § 1251.

§ 1140. The persons so associating must file in the office of the judge of probate of the county in which it is proposed such corporation shall have its principal place of business, a declaration in writing, signed by each of them, stating the names and residences of the subscribers, the name and style of the proposed corporation, the amount of its capital stock, and the number of shares into which it is divided, the general purposes of the corporation, and the nature of the business proposed, and the proposed principal place of business of the corporation, with such other matters as they may deem it desirable to state.

See § 1252, and note. Charters may be amended. §§ 1253-1284.

§ 1141. On the filing of the declaration, the judge of probate must issue to two or more of the subscribers, a commission authorizing them, as commissioners, to open books of subscription to the capital stock of the proposed corporation, at such time and place, and upon such notice as they may appoint.

See § 1253.

§ 1142. All subscriptions to or for the capital stock must be payable in money; but the commissioners may receive subscriptions payable in money, the subscriber having the privilege of discharging the same by the rendition of stipulated necessary services, or the performance of stipulated necessary labor for the corporation, at the reasonable value of such services or labor; or in property, at the reasonable value thereof, the corporation has capacity to acquire and hold; the subscription stating the nature and character of such property, and when it is to be transferred or conveyed to the corporation.

§ 1143. Fifty per cent. of the capital stock having been subscribed in good faith by subscribers of whose solvency the commissioners are satisfied, they shall call the subscribers together, at such time and place as they may appoint, for the election of a board of directors and other officers, and the further organization of the proposed corporation; a majority in value of the subscribers being present in person or by proxy at such time and place, they must elect a board of directors from the subscribers, consisting of not less than three nor more than nine members, and such other officers as they may deem necessary; the directors holding office for a term of twelve months thereafter, and until their successors are elected and qualified; and shall designate an officer of their election, or some person of their appointment, to receive from the commissioners the subscriptions for stock. Upon the delivery of the subscriptions to such officer or person, he shall require of the subscribers whose subscriptions are payable in money, without

the privilege of discharge in services, or labor, or property, the payment in cash of twenty per cent. thereof; and of the subscribers whose subscriptions are payable in money, with the privilege of discharging the same in stipulated service, or labor, or in the transfer or conveyance of property, contracts in writing signed by them, expressing such privilege, and binding them to the rendition of the services, or the performance of the labor, or the transfer or conveyance of the property, at such times as the board of directors may appoint; the proceedings of the meeting of the subscribers must be reduced to writing, and must be signed by them, and delivered to the commissioners, who must return and file the same in the office of the judge of probate; and the officer or person, to whom the subscriptions for stock have been delivered, must make a copy thereof, and verify the same by affidavit, stating in such affidavit from which of the subscribers he has received payment in cash of twenty per cent., and from which he has received contracts in writing, as hereinbefore specified. Upon the filing of such papers, the judge of probate must issue to the subscribers, their associates, and their successors, a certificate stating that they are duly organized as a corporation, under the name and style, and for the purposes expressed in the declaration, having the power, capacity and authority conferred by law.

See § 1255.

§ 1144. When duly organized such corporation has power,—

1. To have succession by the corporate name for the period expressed in the declaration; and if a period of time be not expressed, perpetually.

2. To sue and be sued; and if deemed necessary, to have a corporate seal, and the same to alter at pleasure.

3. To hold, purchase, dispose of, and convey such real and personal property, as the nature of its business, and the purposes for which it is formed may require.

4. To appoint such officers and agents as may be deemed necessary for the transaction of its business, and the management and control of its affairs and property.

5. To make all needful by-laws, rules and regulations for the transaction of its business, the management and control of its affairs, and the uses and disposition of its property; and for the transfer of its stock, and for the creation and preservation of a lien upon the shares of its stockholders for the payment of any debt or liability they may incur to the corporation.

6. To carry on the business, or accomplish the purposes expressed in the declaration.

7. To borrow money, and to mortgage, or otherwise convey or pledge its property, real or personal, and its franchises, to secure the payment of the money so borrowed, or

any other debt contracted by it; but it has not power to borrow a sum exceeding its capital stock, or at a rate of interest exceeding eight per cent., payable semi-annually; nor must such mortgage, conveyance, or pledge be made otherwise than by the consent of the holders of the larger part in value of the capital stock, expressed by vote at a meeting of the stockholders called for that purpose, of the time and place of which meeting, and of the purpose for which it is called, thirty days' notice is given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in the newspaper published nearest to the place of business of the corporation.

See § 1256, cross-references and notes.

§ 1145. Such corporation, when duly organized, has, in addition, power to locate, construct and operate to and from its mines, furnaces, mills, factories, quarries or other works, railways, tramways, canals, tunnels, underground passages, or roads, or to acquire by purchase railways, tramways, canals, tunnels, underground passages, or roads, whereby a connection may be made to and with the principal place of its business, its mines, furnaces, mills, factories, quarries, or other works, and any public highway, turnpike, macadamized, plank, or other graded road, or railroad, or navigable waters, or to or with its mines, ore-beds, coking or cooling grounds, or timber lands; or canals or aqueducts to and from its mills or factories, or furnaces, or quarries, and any waters or water-courses; and such corporation has also power to transport, as a common carrier, persons or property on any railroad, or other road, or on any canal, or aqueduct, constructed or purchased by it, taking reasonable compensation. If necessary in the construction of such canals, aqueducts, railways, tramways, tunnels, underground passages, or roads, the corporation has power to condemn lands, or an interest or easement therein, or thereunder, private property, for a way and right of way, in the mode prescribed by law, such way and right of way not exceeding one hundred feet in width throughout the whole length of such canal, aqueduct, railway, tramway, tunnel, underground passage, or road; and without the consent of the owner of the land, the same must not be constructed through the yard, garden, orchard, stable-lot, gin-house, barn, or through the curtilage of a dwelling-house; and such corporation has power to erect, at such place as may be deemed convenient for its uses, depots, or other buildings, or structures, or wharves; and may purchase, hire, or charter vessels or boats for the transportation of its products or property; and may aid in the construction of railroads, or in the establish-

ment of lines of vessels or boats, running to and from such depots, or other buildings, or structures or wharves; but the owner of any land which may be taken under the provisions of this section, shall have the right to have all his property, of like kind with that transported by the corporation, carried by such corporation over or upon such canal, railway or tramway, upon the payment of a just and reasonable compensation for such carriage.

See § 1155.

§ 1146. In the construction of its railways, tramways, or roads, the corporation may cross any public road or highway, but must place such road or highway in a condition satisfactory to the proper authorities of the county having control thereof; and may, with the consent of the proper authorities of a town or city, and upon such terms and conditions as may be agreed on with such authorities, use or cross the streets of such town or city; and may cross any navigable streams, but must not impair the navigation thereof.

§ 1147. Any two or more mining, quarrying, or manufacturing corporations may unite and consolidate their capital stock, property, and business in the manner herein-after provided.

[Electric-light companies are "manufacturing corporations" within meaning of above section. *Beggs v. Elec. Illum. Co.*, 96 Ala. 295; s. c., 11 So. Rep. 381.]

§ 1148. Such consolidation shall be made on the recommendation of the board of directors of each of the corporations proposed to be consolidated, when adopted by a vote of the persons holding the larger amount in value of the capital stock of each corporation. Such recommendation shall be submitted in writing by the board of directors to the meeting of stockholders, and, with the vote of the stockholders thereon, shall be entered on the minutes.

§ 1149. When a proposal for consolidation has been thus adopted, the consolidation shall be carried out by an agreement in writing, sealed with the corporate seals, and signed by the presidents of the contracting corporations, reciting that such agreement is made with the consent of the stockholders of each of the corporations, given as provided above, and stating the terms and conditions of such consolidation. This agreement must be recorded in the office of the judge of probate of the county in which such corporations are located; or if they be located in different counties, in the office of the judge of probate in each county; and upon the filing of such agreement as above provided, the consolidation is complete.

§ 1150. On such consolidation, the parties may, by their agreement of consolidation,

adopt the name and charter of either corporation as the name and charter of the consolidated corporation, and may make such changes and provisions, as to the amount of stock, and the number of directors of the consolidated corporation, as they may think proper.

§ 1151. The corporation so formed by consolidation shall be entitled to all the property and rights of each of the corporations so uniting, and liable to the debts and obligations of each of them. Suits pending for or against either of such original corporations, at the time of consolidation, are not abated, and shall not be delayed thereby, but shall proceed in the name of the consolidated corporation.

§ 1152. A board of directors, consisting of such number as may be prescribed by the by-laws, must be elected annually by the stockholders, and must hold office for a term of twelve months, and until their successors are elected and qualified; vacancies occurring in the board must be filled by the remaining directors; and the management of the property and business of the corporation is under the control of the directors, who have power to elect and appoint all officers, agents, and servants, removing them at pleasure, fixing their compensation, and prescribing their duties, and to exercise such other powers as may be delegated to them by the by-laws of the adoption of the stockholders.

See § 1257, note.

§ 1153. The stockholders must meet annually at such time and place, and on such notice as may be prescribed by the by-laws.

See § 1258.

§ 1154. The capital stock of the corporation may be increased to a sum not exceeding ten millions of dollars, by the vote of the persons holding the larger amount in value of the capital stock, at a meeting of the stockholders called for that purpose, of which meeting, and the purpose for which it is called, thirty days' notice must be given each stockholder personally, whose residence is known, and by publication for four consecutive weeks, in some newspaper published in the town or city in which the corporation is located; and if at such meeting the persons holding the larger amount in value of the stock vote for such increase, the proceedings of the meeting must be reduced to writing, signed by the president, or chief executive officer of the corporation, and filed and recorded in the office of the judge of probate of the county; each stockholder is entitled to a preference in taking of the increased stock an amount in proportion to the amount of the original stock he may own.

See § 1259, and cross-references.

§ 1155. Any corporation organized under any special charter for mining, quarrying, or manufacturing, may exercise, in addition to the rights and powers conferred under its special charter, all the rights, powers and privileges of corporations organized for mining, quarrying, or manufacturing under the article. [Act of February 21, 1893.]

## ARTICLE II.

### Corporations not Specially Provided For.

Sec. 1251. Who may form.

1252. Declaration to be filed in office of judge of probate; contents.

1253. Commission issued by judge of probate.

1254. Subscriptions for stock.

1255. Organization of corporation.

1256. General powers.

1257. Board of directors; election; powers.

1258. Annual meeting of stockholders.

1259. Limit of capital stock; increase thereof.

1260. Renewal of incorporation.

§ 1251. Two or more persons, associating themselves for the carrying on of any industrial business, or for any lawful enterprise, if not otherwise provided by law, may form themselves into a private corporation, in the mode and with the capacity and powers in this article expressed.

"Corporation" defined. Const., art. XIV, § 13. Must be formed under general laws. Id., § 1. Business confined to purposes for which created. Id., § 5. Limit of corporate existence. Code, § 1256, subd. 1. See § 1137.

[Judicial notice cannot be taken of the charter or act incorporating a private corporation. *City v. Plankroad Co.*, 31 Ala. 76; *Drake v. Flewellen*, 32 Id. 106; *Church v. Price*, 42 Id. 39.]

§ 1252. The persons so associating must file in the office of the judge of probate of the county in which it is proposed the corporation shall have its principal place of business, a declaration in writing, signed by each of them, stating—

1. The names and residences of the subscribers, and the name and style of the proposed corporation.

2. The general purposes of the corporation, the nature of the business intended, and the principal place of business or location of the corporation.

3. The amount of the capital stock and the number of shares into which it is divided.

4. Any other matter it is deemed desirable to state.

Limit of capital stock. § 1259. Increase thereof. Id., and cross-references. Charters may be amended. §§ 1283-1284. Limit of corporate existence may be stated. § 1256. See § 1140.

[Person who contracts with a corporation de facto is estopped to deny its corporate character, and cannot maintain an action against the corporation individually as partners. *Snider's Sons Co. v. Troy*, 91 Ala. 224; s. c. 8 So. Rep. 658. Corporation de facto defined. Id. What is not such dealing as will so estop a person. *Pond v. Bldg. Assn.*, 61 Ala. 232.

## Business corporations: subscriptions — Code, §§ 1253-1255.

The declaration is an acceptance by the corporations, under the name designated, and for the objects expressed, of the corporate powers and capacity the law confers. If more be introduced in the declaration than the statute requires it is mere surplusage, and neither adds to nor detracts from the force of the declaration. *Ins. Co. v. Kamper*, 73 Ala. 325; s. c., 10 Am. Corp. Cas. 21.

What constitutes the charter of a corporation under the general law. *Id.* See *A. & M. Assn. v. Ins. Co.*, 70 Ala. 129.]

§ 1253. Upon the filing of the declaration, the judge of probate must issue to two or more of the subscribers to the declaration a commission, authorizing them, as commissioners, to open books of subscription to the capital stock of the corporation at such times and places as they may appoint.

Subscriptions must be payable in money. Const., art. XIV, § 6; Code, § 1254. See § 1141.

[Legislature, under present Constitution, has power to authorize a county to subscribe for stock in a railroad company if the people chose to do so by a popular vote to that effect. *Ex parte R. R. Co.*, 45 Ala. 696. A county may be authorized and required to issue bonds to railroad company for payment of stock so subscribed. *Id.*

When a person's name appears on books of a corporation as a stockholder, presumption is that he is owner of stock, and onus is on him to show that his name was not subscribed by himself, nor by his authority; and the books are admissible as evidence against him. *Semple v. Glenn*, 91 Ala. 245; s. c., 6 So. Rep. 46; 9 id. 265.]

§ 1254. All subscriptions to or for the capital stock must be payable in money; but the commissioners may receive subscriptions payable in money, the subscriber having the privilege of discharging the same by the rendition of stipulated necessary services, or the performance of stipulated necessary labor for the corporation, at the reasonable value of such services or labor, or in property at the reasonable value thereof, the corporation has capacity to acquire and hold, the subscription stating the nature and character of such property, and when it is to be transferred or conveyed to the corporation.

See Const., art. XIV, § 6.

[Surrender and cancellation of stock is valid and binding as between the corporation and stockholders who avail themselves of it. *Glenn v. Patchett*, 91 Ala. 316; s. c., 8 So. Rep. 46; 9 id. 265.

The act of subscribing for shares creates contract with corporation to pay for shares subscribed in manner provided by charter; and action may be maintained to recover installments called for by a corporation, notwithstanding another remedy may be given by charter. *Beene v. R. R. Co.*, 3 Ala. 660. In action against stockholder for installments upon his shares, it should be alleged by corporation that defendant had notice of requisition. *Carlisle v. R. R. Co.*, 4 Ala. 70. Right to claim forfeiture of stock, and proceedings consequent thereupon is merely a cumulative remedy, and an action will lie to recover subscription. *R. R. Co. v. Tipton*, 5 Ala. 787.

A regular subscription for shares imports in itself a sufficient consideration, and may be declared on as the foundation of an action. *Id.*

Where charter does not require written notice of calls for stock, a verbal notice by the secretary,

by order of president, in pursuance of a resolution of board of directors, is sufficient. *Smith v. Plankroad Co.*, 30 Ala. 650. Fraudulent management of corporation, although it might occasion a forfeiture of charter, is not available as a defense to delinquent stockholder when sued by the corporation. *Id.* Prescription; presumption of payment for stock from lapse of time. *Semple v. Glenn*, 91 Ala. 245; s. c., 8 So. Rep. 46; 9 id. 265.

When stockholder cannot withdraw subscription, or deny corporate existence. *Lehman v. Warner*, 61 Ala. 455; s. c., 6 Am. Corp. Cas. 155.

Subscription to stock is a contract, and must be supported by a consideration. The consideration is the right secured by it of membership; and when these are not secured it is wanting in consideration, as are notes or other obligations given for its payment. *Ins. Co. v. Kamper*, 73 Ala. 325; s. c., 10 Am. Corp. Cas. 21.

Bill by subscribers to stock to have vacated their subscription, and to have cancelled notes given therefor; when without equity; rights of assignee under general assignments. *Id.*

Unpaid subscription for stock is a legal liability on which an action of debt or assumpsit may be maintained by the corporation. *Woldridge v. Holmes*, 78 Ala. 568. Where land is conveyed by stockholder to corporation in payment of subscription, the company is a purchaser for full consideration, whether certificates of stock are issued to him or not. *Frenkel v. Hudson*, 82 Ala. 158; s. c., 5 So. Rep. 578. Above section (1662) construed. *Knox v. Land Co.*, 86 Ala. 180; s. c., 2 So. Rep. 758.

Agreement to take shares in future corporation is not a completed contract of subscription; and if corporation is not organized within reasonable time, or there is a material departure from the original purpose, court of equity will not enforce it. *Knox v. Land Co.*, 86 Ala. 180; s. c., 5 So. Rep. 578.

As a general rule, liability of stockholder on subscription does not mature until call is made, and he cannot be sued without a previous call; but otherwise where subscription is made payable at specified times. *Ruse v. Bromberg*, 88 Ala. 619; s. c., 7 So. Rep. 384.

When subscription for stock is made payable in property, the property must be taken at its reasonable money valuation; and though a margin will be allowed for an honest difference of opinion as to its value, a valuation grossly excessive, knowingly made, while its acceptance may bind the corporation, is a fraud on creditors, and they may proceed against the stockholders individually as for an unpaid subscription. *Land Co. v. B. W. & E. Co.*, 92 Ala. 407; s. c., 9 So. Rep. 129.

Where one has contributed property in exchange for stock, such contribution gives him no valid claim against the corporation until all its debts are paid. *Gibson v. Furniture Co.*, 96 Ala. 357; s. c., 11 So. Rep. 365.

Evidence of subscription for stock sufficient to constitute complainant a stockholder and entitle him to a decree for dividends earned. *Bank v. Roden*, 97 Ala. 404; s. c., 11 So. Rep. 883. In an action on a note for a conditional subscription to stock, the fact that the conditions have been performed can be shown. *Hall v. Sims*, 17 So. Rep. 534. And reasonable performance only of such conditions is required before payment of subscription can be enforced. *Id.* Liability on subscription to stock. *Brockway v. Land Co.*, 15 So. Rep. 431.

The issuance of fictitious stock is a defense to an action on a note given for a subscription thereto. *Bank v.alsey*, 19 So. Rep. 522.

Plan in action on subscription to corporate stock, held not subject to demurrer. *Haas v. Hall*, 111 Ala. 412; s. c., 20 So. Rep. 78.

§ 1255. Fifty per cent. of the proposed capital stock having been subscribed in good faith by subscribers, of whose solvency the commissioners are satisfied, they shall call the subscribers together at such time and

place as they may appoint for the election of a board of directors and other officers, and the further organization of the proposed corporation; a majority in value of the subscribers being present in person or by proxy at such time and place, they must elect a board of directors from the subscribers, consisting of not less than three, nor more than nine members, and such other officers as they may deem necessary; the directors holding office for a term of twelve months thereafter, and until their successors are elected and qualified; and shall designate an officer of their election, or some person of their appointment, to receive from the commissioners the subscriptions for stock. Upon the delivery of the subscriptions to such officer or person, he shall require of the subscribers whose subscriptions are payable in money, without the privilege of discharge in services or labor, or property, the payment in cash of twenty per cent. thereof; and of the subscribers whose subscriptions are payable in money, with the privilege of discharging the same in stipulated services or labor, or in the transfer or conveyance of property, contracts in writing signed by them, expressing such privilege, and binding them to the rendition of the services, or the performance of the labor, or the transfer or conveyance of property, at such times as the board of directors may appoint. The proceedings of the meetings of the subscribers must be reduced to writing, and must be signed by them and delivered to the commissioners, who must return and file the same in the office of the judge of probate; and the officer or person to whom the subscriptions for stock have been delivered, must make a copy thereof, and verify the same by affidavit, stating in such affidavit from which of the subscribers he has received payment in cash of twenty per cent., and from which he has received contracts in writing, as hereinbefore specified; upon the filing of such papers, the judge of probate must issue to the subscribers, their associates and their successors, a certificate stating that they are duly organized as a corporation, under the name and style, and for the purposes expressed in the declaration, having the powers, capacity and authority conferred by law.

Election of directors. § 1257. Defects in organization may be amended. See §§ 1283-1284. See § 1143.

[Above section changes the common law rule, and a business corporation may be organized before all capital stock has been subscribed. *See Schloss v. Trade Co.*, 87 Ala. 411; s. c., 6 So. Rep. 369.]

Stockholder who has participated in corporate action, or ratified or acquiesced in it, is estopped from impeaching validity of such action. *R. R. Co. v. Grayson*, 88 Ala. 572; s. c., 7 So. Rep. 722.

Voting by proxy not unlawful. *R. R. Co. v. Nicholas*, 98 Ala. 42; s. c., 12 So. Rep. 723. Invalid acts of proxy; upon what it depends. *Id.* The exchange of debentures for bonds did not affect voting power given the debenture holders *Id.*]

§ 1256. When duly organized such corporation has power—

1. To have succession by the corporate name for a period of twenty years, if a less period be not expressed in the declaration.

Name must be stated in the declaration. § 1252. Corporation may be renewed. § 1260.

[Identity of corporation, under changed name, in suit to enforce subscription to stock. *Semple v. Glenn*, 91 Ala. 245; s. c., 6 So. Rep. 46; 9 *Id.* 765. Change of corporate name; privity of contract. *Coal Co. v. Long*, 91 Ala. 538; s. c., 8 So. Rep. 765. Name of corporation not being expressly given by charter, may be acquired by implication and use. *Smith v. Plankroad Co.*, 30 Ala. 650.

Duration of corporate existence may be limited by a by-law adopted at the time of organization. *M. & P. Line v. Wagoner*, 71 Ala. 581; s. c., 10 Am. Corp. Cas. 12.

The "American Mortgage Co. of Scotland" and the "American Mortgage Co." are, *prima facie*, different corporations. *State v. Sloss*, 87 Ala. 119; s. c., 6 So. Rep. 399.]

2. To sue and be sued; and, if deemed necessary, to have a corporate seal, which may be altered at pleasure.

See Const., art. XIV, § 12. Forgery of corporate seal. § 4721. Service of summons upon a corporation (1) in chancery. See p. 36. (2) At law. § 3274. (3) On indictment. § 5317. Venue of action against. § 4207. Attachment. §§ 533, 535. Actions to vacate charter. §§ 3417 et seq. Receiver may sue. § 1294. Dissolved corporation may close up suits. §§ 1298, 1300. Foreign corporations may be sued, *how*. Const., art. XIV, § 4. Suits by corporation against subscribers to stock. § 1254, note.

[A private corporation, authorized to "borrow money, and issue their bonds therefor," may be sued on the obligation they give for the repayment of money borrowed, whether it be under seal or not. *McCullough v. Ins. Co.*, 46 Ala. 376. When sued on a contract made by it, corporation cannot plead *nul tiel* corporation, unless in case of misnomer or dissolution. *Id.* Competency as evidence of books of a private corporation. *Id.* Plea of *nul tiel* corporation irrelevant, when. *Ware v. Rope Co.*, 47 Ala. 667. Person who contracts with a corporation as such is estopped to deny its corporate character. *Snider's Sons' Co. v. Troy*, 91 Ala. 224; s. c., 8 So. Rep. 658. De facto corporation defined. *Id.* What not such dealing as will work an estoppel. *Pond v. Bldg. Assn.*, 61 Ala. 232. Judicial notice cannot be taken of the charter, or act incorporating a private corporation. *City v. Plankroad Co.*, 31 Ala. 76; *Drake v. Fawcett*, 33 *Id.* 106; *Church v. Price*, 42 *Id.* 39; *Perry v. R. R. Co.*, 55 *Id.* 413. Otherwise if organized under general law. *Kelly v. Trustees*, 58 Ala. 489. A corporation is bound by same implications and inferences which bind natural persons. *Bates v. Bank*, 2 Ala. 451; *R. R. Co. v. Hunt*, 9 *Id.* 513; *R. R. Co. v. Tipton*, 5 *Id.* 787.

If a corporation lends money, without authority under charter, and takes promissory note to secure payment, it cannot recover under the common money counts. *Lodge v. Waddill*, 36 Ala. 313. The charter of a corporation cannot be declared void in a collateral proceeding, and evidence of fraud in procurement of charter is, therefore, inadmissible in such proceedings. *Duke v. Nav. Co.*, 16 Ala. 372. In an action brought by a corporation it is not necessary, under the general issue, to prove its corporate character. *Garrett v. Bank*, 1 Ala. 241.

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Necessary averments of declaration in an action by a corporation. *R. R. Co. v. Tipton*, 5 Ala. 787.

When name of a corporation is changed, it may sue, in its new name, to enforce former contracts, averring that they were made with it by its former name. *Exrs. v. Tuscaloosa*, 6 Ala. 327.

An action of trespass for false imprisonment lies against a corporation, but an action on the case for malicious prosecution does not. *Owsley v. R. R. Co.*, 37 Ala. 560; overruled as to last proposition in *Jordan v. R. R. Co.*, 74 Id. 85. What is necessary to sustain a judgment by default against a corporation. *Express Co. v. Carroll*, 42 Ala. 437; *Ins. Co. v. McCullough*, 42 Id. 667; *Lyon v. Admsrs.*, 3 Id. 151; *R. R. Co. v. Cole*, 6 Id. 655; *R. R. Co. v. Hartwell*, 43 Id. 508.

During the existence and operation of a corporation, its general creditors have no lien which will entitle them to sue it in a court of equity; but its property can be subjected to the payment of its debts by actions at law. *R. R. Co. v. Branch*, 53 Ala. 139; s. c., 6 Am. Corp. Cas. 136.

A corporation is liable for damages caused by the employment of unfit persons. *Ry. Co. v. Smith*, 59 Ala. 245. And for the improper selection of its officers. *Id.* Who are fellow servants. *Id.*; *Tyson v. R. R. Co.*, 61 Ala. 554. What duty a corporation owes to employes in relation of fellow servants. *Id.*

In a suit against a corporation by an employe, it may recoup damages caused by his fault. *Ry. Co. v. Clanton*, 59 Ala. 392. A corporation may sue an employe for damages caused by his negligence. *Id.*

A corporation has power to make a bond in a judicial proceeding. *Collins v. Hammock*, 59 Ala. 445; s. c., 6 Am. Corp. Cas. 443.

A corporation is civilly liable for torts or for acts and negligence of its servants or agents, to same extent and under same circumstances as a natural person; the only limitation being that it is not liable civilly or criminally for torts, of which malice is an essential ingredient. *R. R. Co. v. Chappell*, 61 Ala. 527; s. c., 8 Am. Corp. Cas. 161. And it is so liable whether acting within the scope of its corporate power or not. *Id.*

Stockholders may obtain redress when interests of corporation are endangered. *Manf. Co. v. Cox*, 68 Ala. 71; s. c., 9 Am. Corp. Cas. 1.

When suit by individual shareholder will not be entertained. *Roman v. Woolfolk*, 98 Ala. 219; s. c., 13 So. Rep. 212.

To obtain equitable relief against corporation and its officers, a stockholder must show what. *Perry v. Mill Co.*, 93 Ala. 364; s. c., 9 So. Rep. 217.

Bill by stockholder to enjoin another corporation from voting its stock in election of officers, etc.; laches for more than six years a defense. *George v. C. R. & B. Co.*, 101 Ala. 607; s. c., 14 So. Rep. 752.

Injunction against corporation at suit of stockholders; previous request to directors for action. *Id.*

Bill by minority of stockholders against a corporation and directors is without equity, when. *M. & P. Line v. Waganer*, 71 Ala. 581; s. c., 10 Am. Corp. Cas. 12. In such proceeding regularity of corporation cannot be questioned. *Id.* When such bill not multifarious. *Id.*

When a bill in equity is filed by a creditor against a corporation, its directors and officers cannot be joined as defendants for the sole purpose of discovery. *Norwood v. R. R. Co.*, 72 Ala. 563.

Necessary averments in bill in equity by corporation. *Denniston v. Ins. Co.*, 73 Ala. 465.

An action against a corporation, founded on a contract which is ultra vires, may be defeated on that ground; but this principle does not apply to an action ex delicto, founded on a tort committed by its officers or agents. *R. & B. Co. v. Smith*, 76 Ala. 573. What is necessary to render a corporation liable, in an action ex delicto, for damages caused by negligence of agents or servants in performance of a contract which is ultra vires. It must be shown that the contract was its corporate act, and not the unauthorized act of such officers or agents. *Id.* Duty of stockholder before bringing suit in equity in respect to acts of directors. *Nathan v. Tompkins*, 82 Ala. 427; s. c., 2 So. Rep. 747. Multifariousness in bill between stockholders and corporation. *Tutwiler v. Land Co.*, 89 Ala.

391; s. c., 7 So. Rep. 398. Necessary parties to such bill. *Id.* Injunction against corporation at suit of stockholders; previous request to directors for action is necessary unless facts are stated which show that such requests would be useless. *Mack v. Coal & Iron Co.*, 90 Ala. 396; s. c., 8 So. Rep. 150.

Corporation may be liable for exemplary damages in suing out a judgment wrongfully and maliciously. *Bank v. Eborn*, 84 Ala. 529; s. c., 4 So. Rep. 386.

An action cannot be maintained against a railroad corporation in Alabama for a tort committed in Mississippi unless the tort was actionable at common law, or is shown to be actionable by statute in Mississippi. *Kahl v. R. R. Co.*, 95 Ala. 337; s. c., 10 So. Rep. 661. Negligence of employe, negligence of corporation. *R. R. Co. v. Phillips*, 98 Ala. 159; s. c., 13 So. Rep. 65; *R. R. Co. v. Sanders*, 98 Ala. 233; s. c., 13 So. Rep. 57.

In suit to recover for work done for a corporation, it is proper to admit testimony that one of the directors saw plaintiff engaged in the work, and testimony of value of such work is admissible. *Ry. Co. v. Corpenning*, 97 Ala. 681; s. c., 12 So. Rep. 295.

In an action begun against corporation, plaintiff may amend complaint and correct misnomer. *Manf. Co. v. Greenleaf*, 109 Ala. 272; s. c., 14 So. Rep. 109.

Bill filed by corporation to quiet title not demurrable because it fails to aver that corporation had power to acquire a whole lien; and corporation will be presumed to have had such power. *Engine Co. v. Mobile*, 101 Ala. 539; s. c., 14 So. Rep. 557.

Right of corporation to enforce a lien for a debt due it by another corporation on stock purchased by an officer of the latter with the funds thereof. *Lumber Co. v. Kess*, 16 So. Rep. 637.

A bank officer cannot testify to contents of books of the bank without producing them. *Roden v. Brown*, 15 So. Rep. 508.

The books of a corporation are evidence against it and between the members thereof, but not in their favor, in suit brought against it by a stranger. *Tuscaloosa v. Wright*, 2 Port. 231.

Court of common law cannot compel officer or agent of a corporation to produce its books, but a court of equity may, and necessity for their production gives equity to a bill for discovery; but, since a corporation cannot answer on oath, the officer having custody of books should be joined as a defendant. *Mining Co. v. Hale*, 93 Ala. 542; s. c., 9 So. Rep. 256.

Books of corporation as evidence. *Terry v. Bank*, 93 Ala. 599; s. c., 9 So. Rep. 290.

A party not having books of corporation in his power may, without notice to produce, prove its transactions by other evidence. *Gaines v. Bank Minor*, 50. When an effort is made to prove fact of agency by an order upon the corporate books, the books themselves must be produced, or secondary evidence of contents, after notice to produce them. *R. R. Co. v. Hurst*, 9 Ala. 513. The organization of a corporation is a matter properly proved by books of corporation, and that, too, when suit is against a stranger. *Duke v. Nav. Co.*, 10 Ala. 82. Person contracting with a de facto corporation is estopped to deny its corporate existence. *A. & M. Assn. v. Ins. Co.*, 70 Ala. 120; s. c., 9 Am. Corp. Cas. 8. Legal existence of corporation cannot be inquired into collaterally but only by the State in a direct proceeding instituted for that purpose. *Id.*; *Sherwood v. Alvia*, 83 Ala. 115; s. c., 3 So. Rep. 307; *Cory v. Lee*, 93 Ala. 468; s. c., 8 So. Rep. 691; *Bibb v. Hall*, 101 Ala. 79; s. c., 14 So. Rep. 98; *Kahn v. Hall*, 101 Ala. 102; s. c., 14 So. Rep. 105. Plea of the general issue by corporation admits what. *Zealy v. Ry. & E. Co.*, 99 Ala. 579; s. c., 13 So. Rep. 118. A special statute, amending charter of a private corporation and ratifying its previous organization thereunder, is competent evidence of the existence of a corporation. *Boykin v. State*, 96 Ala. 16; s. c., 11 So. Rep. 66.

Execution of a note to a corporation by its corporate name, is an admission of the fact, and prima facie evidence of existence of charter of company, and user under it, under plea of null corporation. *R. R. Co. v. Hurst*, 9 Ala. 513. When plea of null corporation is not estab-

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lished. *Sparks v. Woodward*, 87 Ala. 291; s. c., 6 So. Rep. 195. When such plea presents good defense. *Johnson v. Bank*, 88 Ala. 271; s. c., 6 So. Rep. 909. Evidence being adduced prima facie establishing a partnership, the onus is on defendant to prove incorporation. *Clark v. Jones*, 87 Ala. 474; s. c., 6 So. Rep. 362.]

3. To hold, purchase, dispose of, and convey such real and personal property as the nature of its business may require.

Dissolved corporation may dispose of its property. § 1298.

[Question as to power of corporation to acquire property; when and by whom may be raised. *Trustees v. Donovan*, 58 Ala. 241. Stipulation for payment for lands "in bonds of company" does not imply that preferred bonds shall be delivered. *Coal Co. v. Long*, 91 Ala. 538; s. c., 8 So. Rep. 765.

When contract of corporation is ultra vires, neither party can enforce it, and either of them may assail its validity; but, when fully executed, as by execution of deed and full payment of purchase money, a court of equity will not rescind it, nor grant relief against it. *Long v. Ry. Co.*, 91 Ala. 519; s. c., 8 So. Rep. 766.

Ratification by corporation of agent's execution of deed operates as an equitable estoppel of which courts of law cannot take cognizance in actions involving the legal title. *Standifer v. Swan*, 78 Ala. 88; 10 Am. Corp. Cas. 49; *Ware v. Swan*, 79 Ala. 330. Corporation cannot appoint an agent to convey lands, except by vote of directors. Id. Corporations are capable of making every species of deed, and have general power to execute mortgages for security of their debts. *It. R. Co. v. Talman*, 15 Ala. 472; *Allen v. R. R. Co.*, 11 id. 437. When corporate seal is affixed to a deed by proper officer, validity of deed will be presumed. Id. Power of taking a disposition of real estate, construed. *Pond v. Bldg. Assn.*, 61 Ala. 232. Deed of a corporation; what is a sufficient execution of. *R. R. Co. v. Lancaster*, 62 Ala. 555.

Where an officer or agent of a private corporation sells and conveys land to it, his knowledge of an outstanding equity does not charge the corporation with notice. *Frenkel v. Hudson*, 82 Ala. 158; s. c., 2 So. Rep. 758.

Sale of lands by a person professing to act as agent of a corporation, but not shown to have any written authority, and whose appointment is not evidenced by any vote of directors, is without any validity whatever. *Swan v. Miller*, 82 Ala. 530; s. c., 1 So. Rep. 65.

Deed of corporation executed by agent without written authority from board of directors, passes no legal title as against the corporation. *Swann v. Gaston*, 87 Ala. 569; s. c., 6 So. Rep. 386.

Conveyances by corporations are to be executed in same manner as those by individuals, as provided by the Code. *Jinwright v. Nelson*, 105 Ala. 399; s. c., 17 So. Rep. 91. Acknowledgment of deed by foreign corporation, and sufficiency of. Id.]

4. To appoint such officers and agents as may be deemed necessary for the transaction of its business, and the management and control of its affairs and property.

Directors. § 1257, and cross-references. Failure to elect officers. §§ 1276, 1280.

[When express authority of agent of a corporation need not be proved, but may be implied. *Tel. Co. v. Pleasants*, 46 Ala. 641.

Appointment of an agent by a corporation need not be evidenced by a written note of its functionaries; it may be inferred from the adoption of acts of agent by such functionaries, or by the corporation. *R. R. Co. v. Kidd*, 29 Ala. 221;

*Everett v. U. S.*, 6 Port. 166; *Curry v. Bank*, 8 id. 362; *Bates v. Bank*, 2 Ala. 451; *R. R. Co. v. Hurst*, 9 id. 513.

Corporation not bound by declarations of its officers, unless made when acting for it, and about the business which they are transacting for it. *Smith v. Plankroad Co.*, 30 Ala. 650; *Rives v. Plankroad Co.*, id. 92; *Ready v. Mayor*, 6 Ala. 327.

If agent of private corporation contracts a debt upon its supposed credit, when corporation in fact had no authority to contract debts, the contract imposes an original personal liability on the agent. *Drake v. Flewellen*, 33 Ala. 106; *Harwood v. Humes*, 9 id. 659.

Reports of officers to stockholders or directors, regarding liabilities, will not bind corporation, when. *Hall v. Ry. Co.*, 58 Ala. 10. An officer whose term has expired may, if no successor be appointed, continue to perform the duties of the office. *Thorington v. Gould*, 59 Ala. 461; s. c., 6 Am. Corp. Cas. 147. How persons may be proved to be corporate officers. *Ins. Co. v. Peacock*, 67 Ala. 253. Liability of corporation for loss arising from acts of its officers. Id. Authority of secretary to borrow money for corporation. Id. Ratification by agent of corporation, when an estoppel. *Taylor v. A. & M. Assn.*, 68 Ala. 229.

Appointment of agent by or for a corporation may be implied from confirmation of his acts or acceptance of his services. *R. R. Co. v. Hill*, 76 Ala. 303; s. c., 10 Am. Corp. Cas. 40; *Reynolds v. Collins*, 78 Ala. 94.

Corporation for manufacturing machinery has no power to act as agent of another manufacturer of machinery. *Machine Co. v. Wilkinson*, 79 Ala. 312. Note taken by it from a purchaser is void and cannot be enforced either against the maker or against the corporation as indorser. Id. Authority of agent of a corporation construed. *Stanley v. Coal Co.*, 83 Ala. 290; s. c., 4 So. Rep. 34.

Contract of officer or agent of corporation for his own personal benefit; he is liable to account to corporation for profits realized. *Perry v. Mill Co.*, 93 Ala. 364; s. c., 9 So. Rep. 217. No formalities are essential to appointments by a corporation unless expressly provided by its charter. *Transp. Co. v. Kavanaugh*, 101 Ala. 1; s. c., 13 So. Rep. 283. Power of general agent under appointment by resolution of board of directors. Id. Evidence competent to show that person is agent of a corporation. Id. Exercise by agent of powers not expressly conferred; when binding. Id. Acts and contracts of agents may be ratified by a corporation, how. *Bobb v. Hall*, 101 Ala. 79; s. c., 14 So. Rep. 98; *Kahn v. Hall*, 101 Ala. 102; s. c., 14 So. Rep. 105. Ratification by corporation of acts of its stockholders. *Davis v. Chemical Co.*, 101 Ala. 127; s. c., 8 So. Rep. 496. Stockholders may sue president for an accounting, when. *Steiner v. Parsons*, 16 So. Rep. 6.

It will not be presumed that it is the duty of the president of a corporation, as such, to pay its debts. *Sampson v. Fox*, 19 So. Rep. 896.]

5. To make all needful by-laws, rules and regulations for the transaction of its business, the management and control of its affairs, and the uses and disposition of its property; and for the transfer of its stock, and the creation and preservation of a lien upon the shares of its stockholders, for the payment of any debt or liability they may incur to the corporation.

[Binding force of by-laws. *Weatherly v. M. & S. Soc.*, 76 Ala. 567.]

6. To carry on the business, or accomplish the purposes expressed in the declaration.

Powers limited to purposes of creation. Const., art. XIV, § 5. Powers after dissolution. § 1298.

[The ancient rule applied to corporations existing by the common law, that they could act only



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by their common seal, has no application to those created by statute. *Curry v. Bank*, 8 Port. 361. The making of a note to a corporation is an admission by the maker of the existence of the corporation. *R. R. Co. v. Hunt*, 9 Ala. 513.

Unless restrained by legislative enactment, the contracts of a corporation may be made in the same manner or form in which similar contracts could be made by an individual. *Trustees v. Moody*, 62 Ala. 389; s. c., 6 Am. Corp. Cas. 166.

Any corporation, public or private, has capacity, if not prohibited, to take a mortgage as security for the debt contracted in furtherance of the objects of its creation. *State v. Rice*, 65 Ala. 83. Power of a corporation to borrow money. *Ins. Co. v. Peacock*, 67 Ala. 253.

A corporation can only exercise powers expressly granted, or implied powers necessary to carry into effect those expressed powers, and such incidental powers as pertain to the purposes of their creation. *R. & B. Co. v. Smith*, 76 Ala. 573. Persons dealing with a corporation are required, at their peril, to inform themselves of the fact that it has a legal existence, and of the extent of its powers; and are chargeable with notice of every fact that would be disclosed by the act of its incorporation, or other acts therein referred to. *Spencer v. Hy. Co.*, 79 Ala. 576.

Railroad corporation cannot, without an expressed grant of power, acquire interests in mineral lands not necessary for its purpose. *Wilkes v. R. R. Co.*, 79 Ala. 180.

Unless restrained by statute, an insolvent corporation, acting through its board of directors, may make an assignment for the benefit of its creditors. *Chamberlin v. Bromberg*, 83 Ala. 576; s. c., 3 So. Rep. 434.

A railroad corporation has authority to offer reward for arrest and conviction of offenders against its property. *R. R. Co. v. Cheatham*, 85 Ala. 292; s. c., 4 So. Rep. 828. A person earning such reward may collect the same. *Id.* As to acts or contracts of stockholders individually, before incorporation, see *Hardware Co. v. Hardware Co.*, 87 Ala. 296; s. c., 6 So. Rep. 41. Corporation organized to mine and manufacture lime-rock has no incidental power to carry on a mercantile business. *Lime Works v. Dismukes*, 87 Ala. 344; s. c., 6 So. Rep. 122. Ownership and operation of one corporation by another. *Johnson v. State*, 98 Ala. 57; s. c., 13 So. Rep. 503.

Employment of attorneys by or for a corporation to manage its legal business is within authority of board of directors. *Perry v. Mill Co.*, 93 Ala. 364; s. c., 9 So. Rep. 217. When authority of a corporation to enter into and perform a contract is to be presumed. *E. L. & P. Co. v. Hanby*, 101 Ala. 15; s. c., 13 So. Rep. 343.]

7. To borrow money, and to mortgage, or otherwise convey or pledge its property, real or personal, and its franchises, to secure the payment of the money so borrowed, or any other debt contracted by it; but it has not power to borrow a sum exceeding its capital stock, or at a rate of interest exceeding eight per cent., payable semi-annually; nor must such mortgage, conveyance, or pledge be made otherwise than by the consent of the holders of the larger part in value of the capital stock, expressed by vote at a meeting of the stockholders, called for that purpose, of the time and place of which meeting, and of the purpose for which it is called, thirty days' notice is given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in the newspaper published nearest to the place of business of the corporation.

[Corporation has power to borrow money to purchase and improve real estate to enable it to carry

into effect the purpose of its incorporation. *Ins. Co. v. A. & M. Assn.*, 54 Ala. 73; s. c., 6 Am. Corp. Cas. 109.

Corporations are capable of making every species of deed, and have general power to execute mortgages for security of their debts. *R. R. Co. v. Talman*, 15 Ala. 472; *Allen v. R. R. Co.*, 11 Id. 437.

Assignments executed by a corporation to secure payment of debt are valid. *Gibson v. Goldthwaite*, 7 Ala. 282; *Pope v. Brandon*, 2 Stew. 401. Resolution of board of directors authorizing issue of bonds and mortgage; what sufficient compliance with. *R. R. Co. v. Lancaster*, 62 Ala. 535. Bonds of a corporation, public or private, if issued by authority, and possess in themselves the requisites of negotiable paper, are now recognized as on an equality with bank notes, bills of exchange, and promissory notes; and the corporate seal does not affect their negotiability. *Blackman v. Lehman*, 63 Ala. 547. A private corporation may transfer its bonds as collateral security. *Lehman v. Manf. Co.*, 64 Ala. 567. Negotiability of bonds of private corporation. *Id.* Who is a holder in good faith. *Id.* Corporation formed under general laws; power to borrow money and mortgage property. *Taylor v. A. & M. Assn.*, 68 Ala. 229.

Note of corporation may be signed by president without resolution of board of directors. *Oil Co. v. Perry*, 87 Ala. 158; s. c., 4 So. Rep. 635.

Power of corporation to pledge its bonds secured by mortgage of property. *Nelson v. Hubbard*; *Cotton Mills v. Dimmick*, 96 Ala. 238; s. c., 11 So. Rep. 428.

A bill in equity alleging execution of mortgage by a corporation, and seeking its foreclosure, need not allege publication pursuant to the statute, for four consecutive weeks; the execution of mortgage presupposing the giving of the notice and the omission of such requisites being matter of defense. *Id.* Subscribers to corporate bonds; when not liable to stockholders. *Davis v. Chemical Co.*, 101 Ala. 127; s. c., 8 So. Rep. 496. Only stockholders can take advantage of § 1664, subd. 7, prohibiting pledge of corporate property without consent of stockholders. *Barrett v. Pollack Co.*, 18 So. Rep. 615.]

8. Land companies and corporations organized for the purpose of buying, selling or improving land, shall, in addition to the powers above stated, have power to invest their money in other property or assets in enterprises which they deem calculated to advance their interests, or to loan money or property to individuals or corporations buying, leasing or making improvements on or near their lands, and to receive certificates of stock, notes, bonds, mortgages or other security for such investments or loans; and all such investments or loans heretofore made by such companies in good faith are legalized.

[Power to take disposition of real estate, construed. *Pond v. Bldg. Assn.*, 61 Ala. 232.]

§ 1257. A board of directors, consisting of such number as may be prescribed by the by-laws, must be elected annually by the stockholders, and must hold office for a term of twelve months, and until their successors are elected and qualified; vacancies occurring in the board must be filled by the remaining directors; and the management of the property and business of the corporation is under the control of the directors, who have power to elect and appoint all officers, agents and servants, removing them at pleasure, fixing

their compensation, and prescribing their duties; and to exercise such other powers as may be delegated to them by the by-laws of the adoption of the stockholders.

See § 1152. Majority of board is a quorum. § 1275. Change of number of directors. § 1277. Powers of directors after dissolution. §§ 1299, 1300. Act to prevent frauds by directors upon stockholders and bondholders. See § 4776.

[Court of equity will, on application of a stockholder, compel directors to exercise discretion reposed in them as to declaration of dividends, when. *Smith v. Manf. Co.*, 29 Ala. 503.

Responsibility of directors to stockholders. *Id.* Powers and duties of directors. *Manf. Co. v. Cox*, 68 Ala. 71. Fiduciary character of. *R. R. Co. v. Woods*, 88 Ala. 630; s. c., 7 So. Rep. 108. Stockholder may file bill in chancery to restrain officers of corporation from commission of an unauthorized act. *Bliss v. Anderson*, 31 Ala. 612. The acts of a board of directors whose term has ended is valid as to third parties. *Thorington v. Gould*, 59 Ala. 461; s. c., 6 Am. Corp. Cas. 147. When notice to director, or other officer, is not notice to the corporation. *Whelan v. McCreary*, 64 Ala. 319.

Court of equity will not entertain jurisdiction of a suit for the purpose merely of testing legality of an election of directors, or to remove an officer who is in actual possession; but will decide such questions when they arise incidentally and collaterally. *Nathan v. Tompkins*, 82 Ala. 437; s. c., 2 So. Rep. 747; *Moses v. Tompkins*; *Same v. Woodson*, 84 Ala. 613; s. c., 4 So. Rep. 763; *Perry v. Mill Co.*, 93 Ala. 364; s. c., 9 So. Rep. 217; *Elliott v. Sibley*, 101 Ala. 334; s. c., 13 So. Rep. 500.

Agreement among stockholders to hold and vote stock as a unit is not per se illegal. *Moses v. Scott*, 84 Ala. 608; s. c., 4 So. Rep. 742. But a further stipulation in such agreement in general restraint of alienation is condemned by principles of the common law, and a court of equity will not enforce it. *Id.* If a majority of directors resign or are disqualified, a minority has no power to fill vacancies thereby created. *Moses v. Tompkins*, 84 Ala. 613; s. c., 4 So. Rep. 763. What is requisite to constitute officers de facto of a corporation. *Id.* How far their acts are sustained, and who may impeach them. *Id.* When stockholders may obtain equitable relief against directors. *Id.*

President or other officer of a private corporation cannot bind it by contract made in its name with himself personally. *Oil Co. v. Perry*, 85 Ala. 158; s. c., 4 So. Rep. 635. But this principle does not apply to promissory note signed by a president, payable to himself, and indorsed by him for the purpose of borrowing money for the use of the corporation. *Id.* Note of corporation may be signed by president without resolution of board of directors. *Id.*

When court of equity will interfere by injunction, at suit of minority of stockholders, to give relief against oppressive and dishonest management. *R. R. Co. v. Woods*, 88 Ala. 630; s. c., 7 So. Rep. 108.

Fraudulent combination and misconduct of directors, as against stockholders and the corporation; remedies against. *Tutwiler v. Land Co.*, 89 Ala. 391; s. c., 7 So. Rep. 398. A stockholder cannot vote by proxy, unless authorized by charter or by-laws; and a fortiori a director cannot. *Perry v. Mill Co.*, 93 Ala. 364; s. c., 9 So. Rep. 217.

A director who takes advantage of his position and influence to serve his personal interests, or the interests of a third person in whom he is personally interested, is guilty of fraudulent abuse of trust and liable personally as trustee. *Id.*

Transactions between two corporations acting through same persons as directors may be avoided by either corporation, but cannot be assailed by creditors except on ground of fraud. *Manf. Co. v. Furnace Co.*, 95 Ala. 614; s. c., 10 So. Rep. 290. When equity will compel directors to declare dividends. *Wolfe v. Underwood*, 96 Ala. 329; s. c., s. c., 11 So. Rep. 344. Directors and officers of an

insolvent corporation are trustees for creditors. *Corey v. Wadsworth*, 99 Ala. 68; s. c., 11 So. Rep. 350.

Bill to remove directors from office is wanting in equity, when. *Elliott v. Sibley*, 101 Ala. 334; s. c., 13 So. Rep. 500.

President of a corporation, without authority from directors, cannot convey corporate property for benefit of creditors. *Norton v. Bank*, 102 Ala. 420; s. c., 14 So. Rep. 872. Subsequent ratification thereof by directors insufficient as against attaching creditors. *Id.* See, also, *Bibb v. Hall*, 101 Ala. 79; s. c., 14 So. Rep. 98; *Kalm v. Hall*, 101 Ala. 102; s. c., 14 So. Rep. 105. Directors owning all the stock of a corporation may authorize its president to sell the assets. *Jordan v. Collins*, 18 So. Rep. 137.]

§ 1258. The stockholders must meet annually, at such time and place, and on such notice, as may be prescribed by the by-laws.

See §§ 1153, 1280.

§ 1259. Any company or corporation already organized, or that may hereafter be organized under the provisions of this article, may have a capital stock not exceeding ten millions of dollars, and any corporation now, or hereafter organized under the provisions of this article, may increase its capital stock to an amount not exceeding ten millions of dollars by the vote of the persons holding the larger amount in value of the stock thereof, at a meeting of the stockholders called for that purpose, of which meeting and the purpose for which it was called, thirty days' notice must be given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in some newspaper published in the town, city, or county in which the corporation is located; and if at such meetings the persons holding the larger amount in value of the stock vote for such increase, then such increase shall be made to amount stated in the notice, or to a less amount, as may be determined. The proceedings of the meeting must be reduced to writing, which must be signed by the president or chief executive officer of the corporation, filed and recorded in the office of the judge of probate of the county in which the corporation is located. Each stockholder is entitled to a preference in taking of the increased stock an amount in proportion to the amount of the original stock he may own, and shall have a right for sixty days after the increase of stock has been agreed upon to take and pay for his pro rata of the stock in proportion to the stock originally held by him. And the stock heretofore issued by corporations organized under this article whose capital stock does not exceed ten millions of dollars, is hereby legalized and made valid, notwithstanding the amount of capital stock of such corporation exceeds the amount heretofore authorized by said article. Neither stock nor bonds shall be

issued by any private corporation except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void.

See § 1154. Fictitious increase of stock prohibited. Const., art. XIV, § 6. Issue of preferred stock. *Id.*, § 9. Preference to old stockholders on increased stock. § 1272.

[Provisions of above section are requirements for benefit of stockholders, and compliance therewith may be waived by them. *Nelson v. Hubbard; Cotton Mills v. Dimmick*, 96 Ala. 238; s. c., 11 So. Rep. 428.]

§ 1260. An incorporation under this chapter may be renewed according to the provisions hereinbefore made, with the consent of a majority in value of the stockholders, expressed at a meeting of the stockholders called for that purpose.

Limit of corporate existence. § 1256.

#### ARTICLE XII. GENERAL PROVISIONS.

Sec. 1261. Shares of stock personal property.

1262. Transfer on books.

1263. Must require a register of transfer on books; transfers not registered, void.

1264. Transfer may be made by personal representative.

1265. Stock subject to levy and sale.

1266. Statement furnished officer making levy.

1267. Stock record-books must be kept.

1268. Lien of corporation on shares of stockholder.

1269. Preferred stock.

1270. Increase of capital and bonded debt of corporations organized under special charter.

1271. Franchise tax.

1272. Increased capital stock; preference of stockholder.

1273. Forfeiture of franchise by non-user.

1274. Books of corporation open to inspection.

1275. Majority of board exercise corporate powers.

1276. Failure to elect officers does not dissolve corporation.

1277. Change of number of directors.

1278. Purchase of stock or bonds by officers.

1279. Actions by officers calculated to depreciate the value of securities; misdemeanor; remedy; pleading.

1280. Stockholders' meetings.

1281. Voting by proxy.

1282. Curing defects in organization.

1283. Altering and amending charter.

1284. Duties of probate judge and secretary of State.

1285. Record kept by judge of probate; fees.

1286. Corporate name not to be that of another corporation nor name of a person or firm.

§ 1261. Shares or interest in the stock of private corporations are personal property, transferable on the books of the corporation in such manner as is required by the by-laws, or by the rules and regulations of the corporation.

Taxation of shares of stock. § 3911. Transfer. §§ 1262-1267. Levy and sale of. § 1265.

[Stock in a plankroad company is a chose in action. *Bank v. St. John*, 25 Ala. 566.

Trover lies for conversion of shares in a corporation; and pledgee, when sued for such conversion, may recoup his debt from pledgor. *Na-*

*bring v. Bank*, 58 Ala. 205; s. c., 6 Am. Corp. Cas. 124.

Pledge of stock as security, shares being transferred to lender of book of company; when pledgee has no authority to sell. *Id.*

Sometimes a court of equity will decree specific performance of contract for sale of stock in a private corporation. *Moses v. Scott*, 84 Ala. 608; s. c., 4 So. Rep. 742. Not unlawful to agree to purchase controlling interest in corporation. *Beitman v. Steiner*, 98 Ala. 241; s. c., 13 So. Rep. 87.

Nature of capital stock; it is a security for creditors of corporation, and entitles holder to participate in management of corporate business, to share in its profits, and in its surplus, after payment of corporate debts. *Janney v. Bank*, 98 Ala. 515; s. c., 13 So. Rep. 761. Rights of parties to pledge stock. *Id.* Definition of capital stock of a corporation. *Ins. Co. v. Board of Rev.*, 99 Ala. 1; s. c., 14 So. Rep. 490. Capital stock of one corporation cannot be invested in the capital stock of another. *Id.*

§ 1262. When, by the charter, articles of association, or by-laws and regulations of a private corporation, the transfer of the stock is required to be made upon the book or books of the corporation, no transfer of stock shall be valid as against bona fide creditors, or subsequent purchasers, without notice, except from the time that such transfer shall have been registered, or made upon the book or books of such corporation.

See §§ 1263, 1264.

[Clause in act of incorporation providing that stock shall be transferable only on the books, is for security of corporation, and does not prevent title from passing by transfer otherwise made. *Duke v. Nav. Co.*, 10 Ala. 82. But, if so provided by charter, trustees may declare by a by-law, that "No stockholder shall be permitted to transfer his stock while he is in default." *Cunningham v. Ins. & Tr. Co.*, 4 Ala. 652. Legal title to stock can only be acquired by transfer made in mode prescribed; a complete equitable title may be otherwise acquired entitling transferee to demand that he be invested with legal title. *Ins. Co. v. Bank*, 63 Ala. 585; s. c., 6 Am. Corp. Cas. 171. Who are "bona fide creditors" under above section. *Jones v. Latham*, 70 Ala. 164; s. c., 9 Am. Corp. Cas. 16. What is a substantial compliance with above section. *Fisher v. Jones*, 82 Ala. 117; s. c., 3 So. Rep. 13.

Mortgage of stock passing legal title as between the parties, without any transfer of the certificates or of the stock itself on the books of the corporation. *Campbell v. Iron Co.*, 83 Ala. 351; s. c., 3 So. Rep. 369.

A sale of stock under power contained in a mortgage cuts off redemption, provided he was informed of the intended sale, and sanctioned it. *Id.* Power of sale contained in a mortgage, construed. *Id.*

Under §§ 1262-3, stocks are placed on same footing as other personal chattels, as to liability to levy under execution or attachment; a transfer thereof, not recorded on books within fifteen days, is void as to bona fide creditors, or subsequent purchasers without notice. *Bank v. Pluckard*, 87 Ala. 577; s. c., 6 So. Rep. 364. Statutory restrictions of voting powers of stockholders cannot be evaded by a nominal transfer of stock to other persons, to be held and voted in the interest of transferee. *Mack v. Coal & Iron Co.*, 90 Ala. 596; s. c., 8 So. Rep. 150. Stock of married woman, in name of husband as trustee, has right to transfer with or without notice. *Winter v. Gaslight Co.*, 80 Ala. 544; s. c., 7 So. Rep. 773.]

§ 1263. It is the duty of every private corporation to require the transfer of its stock to be made or registered on the books of the

## Corporations; shares of stock — Code, §§ 1264-1267.

corporation; and persons holding stock not so transferred or registered, or holding any stock under hypothecation, mortgage, or other lien, must have the transfer, hypothecation, mortgage, or other lien made or registered on the books of the corporation, or upon failing to do so within fifteen days, all such transfers, hypothecations, mortgages, or other liens shall be void as to bona fide creditors, or subsequent purchasers without notice.

See §§ 1262, 1264.

[Competency as evidence of books of a private corporation. *McCullough v. Ins. Co.*, 46 Ala. 376. A certificate of stock in a private corporation, indorsed in blank, is not a negotiable instrument, and no custom or usage among stock brokers to the contrary is valid. *Land Co. v. Dennis*, 85 Ala. 565; s. c., 5 So. Rep. 317.]

§ 1264. An executor or administrator, deriving his appointment from a court of probate of this State, or if the testator or intestate resided without the State, from the proper tribunal of his domicile, may transfer the shares of stock held and owned by such testator or intestate in any private corporation existing under the laws of this State; payment of dividends on such stock may be made to such executor or administrator.

Trust funds not to be invested in corporate stocks. Const., Art. IV, § 35.

[An administrator of a non-resident may be appointed in the county of the residence of a corporation in which his intestate owned stock and may transfer the shares, although the foreign administrator might have done so. *Winter v. London*, 99 Ala. 263; s. c., 13 So. Rep. 118.]

§ 1265. The shares of stock are subject to levy and sale under attachment or execution, as is other personal property; and the levy may be made with or without the officer having or obtaining possession of the certificate of stock, by indorsement on the attachment or execution, stating the number of shares, or other interest, on which the levy is made, and giving notice thereof to the custodian of the books of transfer, if he be known and reside within the State, or if he be unknown, or if he reside without the State, by posting notice at the courthouse door of the county, and by publication for three consecutive weeks in a newspaper published at or near the principal place of business of such corporation; all transfers of the stock made in good faith and for a valuable consideration before notice of the levy is given, are valid and operative, and must prevail over the levy. The levy and the sale thereunder may be made in the county of the residence of the defendant, or in the county in which the corporation has its principal place of business; and on making the sale, the sheriff must make to the pur-

chaser a transfer of the stock in writing; and the purchaser has the right to require the proper officer to register such transfer on the books of the corporation, and, with or without such registry, is entitled to all the rights and interests of the defendant as whose property such stock was sold.

See §§ 1266, 1267. Attachment of shares and subscription. §§ 533 et seq. May be levied on and sold for taxes. See §§ 1266, 1267.

[Execution cannot be levied upon shares of stock of a corporation which have been pledged or mortgaged by defendant, as security for a debt, and transferred on books of company to the pledgee or mortgagee, and purchaser at sheriff's sale, under such levy, acquires no title to the shares. *Nabring v. Bank*, 58 Ala. 203; s. c., 6 Am. Corp. Cas. 125. Transfer of stock in insolvent corporation; averment of notice. *Jones v. Latham*, 70 Ala. 164; s. c., 9 Am. Corp. Cas. 16.

Statute not requiring that notice to custodian of books shall be in writing, oral notice is sufficient. *Abels v. Ins. Co.*, 92 Ala. 382; s. c., 9 So. Rep. 423. §§ 1262-1265 construed. *Id.*; *White v. Rankin*, 90 Ala. 541; s. c., 8 So. Rep. 118.

Shares of stock are not subject to levy and sale by tax collector for unpaid taxes assessed against owner. *Kennedy v. Ry. Co.*, 93 Ala. 494; s. c., 9 So. Rep. 608.]

§ 1266. Whenever any sheriff or other officer, having an execution or attachment in his hands against any person, makes demand of the custodian of the books of any corporation, it shall be the duty of any corporation, upon the officer exhibiting with a copy thereof, if demanded, it shall be the duty of such custodian to furnish such officer a statement signed in his official capacity, of the number of shares or amount of interest held by such person in such corporation, and also a statement of all liens, mortgages or hypothecations of such stock, and the amount thereof, as shown on the books of such corporation; and if such custodian of such books neglects or refuses to furnish the statement, or if he shall wilfully give a false statement thereof, he shall be liable to the plaintiff or other person purchasing such stock, as the one or the other may be damaged, for double the amount of damages occasioned by such neglect, refusal or false statement. (Act of Feb. 18, 1893.)

See § 1265.

§ 1267. Every corporation incorporated under any law of this State, general or special, shall keep in this State, in the hands of some officer, books showing who are the holders of stock therein, and all transfers, hypothecations, liens or mortgages of such stock must be entered upon said book within fifteen days after the same shall have been made or created, or the same shall be void against the lien of such attachments and executions, unless the plaintiff therein had notice of such

## Lien on stock; preferred stock; increase — Code, §§ 1268-1271.

transfer, hypothecations or mortgages prior to the levy of such attachment or execution. (Act of Feb. 18, 1893.)

See § 1265.

§ 1268. All private corporations have a lien on the shares of its stockholders, for any debt or liability incurred to it by a stockholder before notice of a transfer, or of a levy on such shares; and if necessary for the payment of such debt, or the satisfaction of such liability, the corporation may sell the shares after notice for thirty days, sent through the mail, postage paid, to the stockholder, or if he be dead, to his personal representative, at the post-office nearest his last known place of residence, or after personal demand of payment or satisfaction from either, if such demand be not complied with in thirty days; such sale to be made at public auction to the highest bidder, after ten days' notice of the time and place, by publication in some newspaper published at the principal place of business of the corporation, or nearest thereto.

[Lien of corporation on stock for debts due from stockholder; at common law and under statutes. *Ins. Co. v. Cullom*, 49 Ala. 558. Above statute construed. *Tutwiler v. Land Co.*, 89 Ala. 391; s. c., 7 So. Rep. 338. Lien of corporation on shares of stockholder subsequent to prior pledge. *Tr. & Sav. Co. v. Bank*, 99 Ala. 379; s. c., 13 So. Rep. 112.

This section confers the lien to secure debts which had been contracted before its enactment, as well as those contracted afterward. *Tr. & Sav. Co. v. Land Co.*, 101 Ala. 394; s. c., 13 So. Rep. 72.

Necessary averments in bill by stockholder to enjoin sale by corporation of his stock. *Elliot v. Sibley*, 101 Ala. 344; s. c., 13 So. Rep. 599. Corporation is necessary party to such bill. *Id.* A complainant must offer to do equity. *Id.*

Enforcement by corporation of lien under § 1674; no action by directors necessary. *Id.*]

§ 1269. Any corporation organized under the general incorporation laws of this State may issue preferred stock by the vote of persons holding two-thirds in value of its stock, at a meeting of the stockholders called for that purpose, of which meeting, and the purpose for which it is called, thirty days' notice must be given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in some newspaper published in the town or city in which the corporation is located, or if not located in a town or city then in some newspaper published in the county in which the corporation is located; and if, at such meeting, the persons holding two-thirds in value of the stock vote for the issue, the proceedings of the meeting must be reduced to writing, signed by the president or chief executive officer of the corporation, and filed and recorded in the office of the judge of probate of the county in which the corporation is located. Each stockholder shall be first entitled to the priv-

ilege of taking such preferred stock in proportion to the amount of common stock held by him, or a less amount, if he should desire it, before such preferred stock is offered for sale to the public. (Act of Feb. 28, 1889.)

§ 1270. The capital stock and bonded indebtedness of any private corporation organized in this State under special charter, may be increased by the consent of the persons holding the larger amount in value of the stock of such corporation obtained in favor thereof, at a meeting of the stockholders of such corporation convened for the purpose of voting upon the proposition to increase such capital stock or bonded indebtedness, to be held after thirty days' notice thereof shall have been given by publication in a newspaper of general circulation, published in the county where such corporation has its principal office, and if no such newspaper be published in that county then in a newspaper having general circulation published in the county nearest the principal office of such corporation, a copy of which shall be mailed to each stockholder, which notice shall explicitly state what increase is proposed to be made to the capital stock or bonded indebtedness of such corporation. If at the meeting called in pursuance of this notice, the consent of the person holding the larger amount in value of the stock of such corporation shall be obtained to a specified increase of either the capital stock or bonded indebtedness of such corporation, a report thereof specifying the amount of increase consented to, shall be made to the secretary of State, who shall make and keep a record thereof, and it shall be lawful for such corporation to increase its capital stock or bonded indebtedness in conformity with such consent of the stockholders. Such increase may be to a less, but not to a greater amount than stated in the published notice of the meeting; but neither stock nor bonds shall be issued by any private corporation except for money, labor done, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void. (Enacted December 10, 1890, and amended in 1893 and 1895.)

Fictitious increase of stock or indebtedness prohibited. Const., art. XIV, § 6. Issue of preferred stock. *Id.*, § 9. Mode of increasing stock. Code, §§ 1154, 1259. Preference to prior stockholders. § 1272.

[Statutory mode for increasing stock must be pursued. *Ins. Co. v. Kamper*, 73 Ala. 325. A corporation has not, either at common law or under the statute, an implied power to change its capital; as such change can only be effected by legislative sanction. *Ins. Co. v. Kamper*, 73 Ala. 325; s. c., 10 Am. Corp. Cas. 21.]

§ 1271. A franchise tax of twenty-five dollars shall be paid on every fifty thousand dollars increase of capital stock until the

capital stock amounts to one million dollars. The franchise tax for all increase of capital over one million dollars and under five million dollars, shall be five hundred dollars, and for all increase over five million dollars, one thousand dollars, to be paid into the State treasury. (Enacted December 10, 1890, and amended 1893 and 1895.)

§ 1272. The stockholders of a private corporation, on an increase of the capital stock thereof, have the preference of taking such increased stock, in proportion to the amount of the original stock held and owned by them, each stockholder taking his pro rata share, or any less amount.

See § 1259, cross-references.

§ 1273. The non-user of corporate franchises for a period of five consecutive years is a forfeiture of such franchises; and, if not otherwise provided, the failure to organize a private corporation for a period of two years after filing the declaration for incorporation is a forfeiture of all right to organize under such declaration.

Proceedings to forfeit charters. §§ 3417 et seq.

[In the creation of every corporation, it is implied in law that a misuser or nonuser shall effect a forfeiture of charter. *State v. Bank*, 2 Stew. 30.]

§ 1274. The stockholders of all private corporations have the right of access to, of inspection and examination of, the books, records and papers of the corporation, at reasonable and proper times.

[Right and duty of stockholder to obtain information of proceedings by inspection of the records of the company. *Thames v. Ins. Co.*, 49 Ala. 577.]

Stockholder in a private corporation has the right, at reasonable and proper times, to inspect its books, and this right he may exercise through an agent or attorney in fact; nor is it necessary that he should show a different and legitimate purpose, or negative an unlawful and improper purpose. *Foster v. White*, 86 Ala. 467; s. c., 6 So. Rep. 88. And this right may be enforced by mandamus. *Id.*

National banks are within the purview of this statute. *Winter v. Baldwin*, 89 Ala. 483; s. c., 7 So. Rep. 734.

A mandamus will be awarded against any officer having custody of books on his improper refusal to allow stockholder to inspect them. *Id.* But not against the corporation, unless to compel the discharge of some corporate duty. *Id.*

A court of law cannot compel officer or agent of a corporation to produce its books, but a court of equity may, and necessity for their production gives equity to a bill for discovery; but, since a corporation cannot answer on oath, the officer having custody of books should be joined as a defendant. *Mining Co. v. Hale*, 93 Ala. 542; s. c., 9 So. Rep. 256.

Books of corporation as evidence. *Terry v. Bank*, 93 Ala. 539; s. c., 9 So. Rep. 239.]

§ 1275. When the corporate powers are directed to be exercised by any particular body, or number of persons, a majority of

such body or persons, unless it is otherwise provided, form a board for the exercise of such powers.

See § 1257, cross-references.

§ 1276. A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors.

[Failure to elect officers does not dissolve the corporation. *Curry v. Woodward*, 53 Ala. 371. Officer whose term has expired may, if no successor be appointed, continue to perform the duties of the office. *Thorington v. Gould*, 59 Ala. 461; s. c., 6 Am. Corp. Cas. 147.]

§ 1277. All private corporations have power to increase or diminish the number of their directors, or other managers, with the consent of the persons holding the larger amount in value of the capital stock, expressed by the vote of such persons at a regular meeting of the stockholders, or at a meeting called for that special purpose, of which, and the purpose for which it is called, thirty days' notice is given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in a newspaper published at the principal place of business of the corporation, or nearest thereto.

See §§ 1257 et seq.

§ 1278. Any purchase of the stock or bonds of a corporation by the president, or any director or other managing officer of such corporation from any person, other than the corporation itself, shall be held and considered as a transaction between persons in fiduciary relations, and subject to all the rules of law governing a purchase by a trustee from the beneficiary of the trust. (Enacted December 10, 1892.)

§ 1279. The president of any corporation, or any director or managing officer thereof, by whatsoever title he may be known or called, who shall do or omit to do any act, or who shall make any declaration or statement, in writing or otherwise, with the intent to depreciate the market value of the stock or bonds of such corporation, to the end that such president, director or other officer, or any other person, may buy any such stock or bonds at less than the real value thereof, shall be guilty of a misdemeanor. And any bondholder or stockholder of such corporation who shall, by reason of such act, omission, declaration or statement made with the intent aforesaid, be induced to sell any bonds or stock of such corporation at less than the real value thereof, may recover in an action on the case, against the president, director or managing officer of the corporation, guilty of such act or

omission or of making such declaration or statement, all damages sustained by such sale. In such action the plaintiff must aver and prove the ownership of the stock or bonds of the corporation, the act, omission, declaration or statement, and the name and office in the corporation of the person or persons who made the same, and that the same was made with the intent to depreciate the market value of the stock or bonds of such corporation to the end that some person might buy the stock or bonds of such corporation at less than the real value thereof, and that by reason of such act, omission, declaration or statement, made with the intent above stated, the plaintiff was induced to sell the stock or bonds in such corporation owned by him, and the difference between the real value thereof and the price obtained by the plaintiff at such sale.

See § 1257, and note.

§ 1280. The stockholders of every private corporation must meet annually, at a time and place, and upon notice to be prescribed by the by-laws; and the board of directors or other managers, have the power to call special meetings; and each stockholder is entitled to one vote for each share of stock held and owned by him; the failure to hold annual meetings of the stockholders, or the failure to elect directors regularly, shall not operate a forfeiture of corporate franchises.

See § 1258.

[A stockholder who is represented at a stockholders' meeting by proxy is chargeable with notice of all facts connected with the proceedings which were known to his proxy; and he cannot set up his ignorance of those facts as grounds for equitable relief against the company. *Thames v. Ins. Co.*, 49 Ala. 577.

Corporate existence is not destroyed by failure to elect. *Moses v. Tompkins*, 84 Ala. 613; s. c., 4 So. Rep. 763.]

§ 1281. The capital stock in any corporation organized under the laws of this State, may, at all stockholders' meetings, be voted by proxy, if the right to vote by proxy be conferred by the charter of the corporation, or claimed or reserved in its declaration, or permitted by a by-law duly adopted by the stockholders of the corporation. (Enacted December 12, 1892.)

[Voting by proxy, not unlawful. *R. R. Co. v. Nicholas*, 98 Ala. 92; s. c., 12 So. Rep. 723. Invalid acts of proxy; upon what it depends. *Id.*

The exchange of debentures for bonds did not affect voting power given the debenture holders. *Id.* Voting by proxy not allowable unless authorized by charter or by-laws. *Perry v. Tuscaloosa C. S. O. M. Co.*, 93 Ala. 364; s. c., 9 So. Rep. 217.

Validity of "voting trusts." *Moses v. Scott*, 84 Ala. 608; s. c., 4 So. Rep. 742; *R. R. Co. v. Nicholas*, supra.]

§ 1282. Whenever any private corporation heretofore or hereafter created under the

laws of this State, has accidentally or inadvertently failed to comply with the requirements of the statute in its organization, it shall be lawful for the president of such corporation to supply such omission by filing with the probate judge who issued the certificate of incorporation, a statement, under oath, setting forth such omission and supplying the same, which shall be filed with the other papers of such incorporation and recorded. And such filing shall relate back to the date of such incorporation, except as to the rights of third parties, which may have intervened.

§ 1283. Any corporation which has heretofore, or which may be hereafter, organized under the general incorporation laws of this State, and any corporation which has heretofore been chartered by an act of the general assembly, prior to the enactment of the general incorporation laws of this State of 1867, may alter or amend its charter by filing in the office of the judge of probate of the county wherein the original declaration of incorporation was filed, or in cases where the charter was granted by an act of the general assembly, prior to the enactment of the general incorporation laws of this State of 1867, in the office of the judge of probate of the county wherein such corporation has its principal place of business, or in the office of the secretary of State, in cases where the original declaration was filed in that office, a declaration in writing, signed by not less than three-fourths in number of the stockholders, holding not less than two-thirds in value of the stock thereof, verified by the affidavit of some one or more of the signers thereof, stating that the statements therein contained are true, and that the signers thereof signed the same in the presence of affiant, or acknowledged their signatures thereto to him, and setting forth—

1. When such corporation was organized, its name, what change, if any, is desired to be made in such name, and the amount of its capital stock which has been subscribed for and taken.

2. The names of the stockholders signing the same and the amount of stock held by each.

3. The purposes of the corporation and the nature of its business, as the same is set forth in the original declaration, and the alterations and amendments thereof desired.

4. The amount of the capital stock as shown by the original declaration, and the amount to which it is proposed to decrease such capital stock, if a decrease is proposed.

But no such change or alteration in the charter of any corporation shall authorize it to exercise any powers, or do any acts which similar corporations are not authorized to exercise and do, under the laws existing at the time such alteration or amendment is made, nor to decrease its stock below the minimum fixed by existing laws.

§ 1284. Upon the filing of the declaration provided for by the preceding section in the office of the judge of probate or secretary of State, as the case may be, it shall be the duty of that officer to issue a certificate, certifying that such corporation under its new name and style, is duly authorized to do business with the powers and capacity conferred after such alterations and amendments, which declaration and certificate must be recorded in the office of the judge of probate or the secretary of State, in and from which the same are filed and issued.

§ 1285. It is the duty of the judge of probate to keep a well-bound book, in which must be recorded, consecutively, the declaration of incorporation, the commission issued to the commissioners, the proceedings of the meeting of the subscribers on the appointment of the commissioners, the list of subscriptions returned to, and filed in his office, and the affidavit thereto, and the certificate of incorporation and organization; and for the record thereof he is entitled to fifteen cents for each hundred words, and to a fee of one dollar for the certificate of incorporation and organization, and to a fee of one dollar and fifty cents for the filing of the declaration, and for the issue of the commission to the commissioners.

[Competency as evidence of books of a private corporation. *McCullough v. Ins. Co.*, 46 Ala. 376.]

§ 1286. No certificate of incorporation shall issue to any corporation under the same corporate name as that already assumed by another corporation of this State unless it be the successor of such other corporation; nor when the corporate name assumed is that of a person or firm, unless there be joined thereto some word designating the business to be carried on, followed by the word "Company" or "Corporation." If any corporation shall hereafter assume as its corporate name, the name of a person or firm without the qualification above required in such case, the organization of such corporation is void and the stockholders are liable as partners.

#### ARTICLE XIII. CHARTER FEES REQUIRED OF DOMESTIC CORPORATIONS.

Sec. 1287. Fees to be paid by corporations organized under the general law before commission issues.

1288. Upon increase of capital stock difference between fees upon original and increased amounts to be paid.

1289. Same, when organized by special act.

1290. Corporations formed for charitable or religious purposes only, excepted.

§ 1287. Before a commission shall issue to any corporation organized under the general incorporation laws of this State, authorizing such corporation to do business, the parties to whom the same is issued shall pay to the judge of probate or other officer issuing the same, to be reported to the auditor and the

money paid into the State treasury in the same manner as licenses issued by the judge of probate are required to be reported and the money paid into the treasury, the following fees for the use of the State: Where the proposed capital stock does not exceed fifty thousand dollars, a fee of twenty-five dollars; where it exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars, a fee of fifty dollars; where it exceeds one hundred thousand dollars but does not exceed two hundred and fifty thousand dollars, a fee of seventy-five dollars; where it exceeds two hundred and fifty thousand dollars but does not exceed five hundred thousand dollars, a fee of one hundred dollars; where it exceeds five hundred thousand dollars but does not exceed one million dollars, a fee of two hundred dollars; where it exceeds one million dollars, a fee of two hundred and fifty dollars. All corporations or mutual companies which have no capital stock shall pay a fee of twenty-five dollars.

§ 1288. Before the report of the proceedings of the stockholders increasing the capital stock of a corporation shall be filed, such stockholders shall pay to the judge of probate or other officer filing the same, to be reported to the auditor and paid into the treasury as provided in the preceding section, the fee prescribed by the preceding section upon the amount of the capital stock as thus increased, less the amount of the fee as therein prescribed upon the amount of the capital stock before such increase.

§ 1289. Before any bill for the creation of any corporation by any special act of the general assembly of this State shall be introduced, there shall be paid into the treasury of the State by the parties seeking the same, double the fees required to be paid by corporations organized under the general incorporation laws; and before any bill for enlarging, amending, or correcting the charter of any corporation already established, or for confirming any such corporation by special act of the general assembly, shall be introduced, there shall be paid into the treasury of the State, by the parties seeking the same, a fee of fifty dollars. If such charter should not be granted, enlarged, amended, or corrected, as the case may be, the money so paid shall be refunded to the person paying the same, under such rules and regulations as the auditor may prescribe.

§ 1290. The provisions of the three preceding sections do not apply to corporations organized solely for charitable, religious, social or literary purposes, nor to fraternal beneficiary organizations and orders operating upon the lodge system and providing for the payment of life, sick, accident and other benefits to the members of such societies, orders, or associations and dependents of such members, and which are not created for the purpose of making a pecuniary profit for its members and issuing no stock to its members.



**ARTICLE XIV. DISSOLUTION OF BUSINESS CORPORATIONS.**

- Sec. 1291.** Petition for dissolution.  
 1292. Notice by register.  
 1293. When dissolution decreed.  
 1294. Receiver appointed; his duties.  
 1295. How selected; bond.  
 1296. Receiver pays debts; contested claims.  
 1297. Appeal.  
 1298. Powers after dissolution.  
 1299. Administration of affairs on dissolution.  
 1300. Authority of officers.  
 1301. Time for settling extended.

§ 1291. Whenever a majority of the stockholders of any private corporation, owning three-fourths of the stock, wish to dissolve the corporation, they may do so in the following manner: They shall file a petition in the chancery court of the division in which the corporation is located, or has its principal place of business, setting forth the names of all the stockholders, and their residences, the amount of stock owned by each stockholder, as nearly as practicable all the property, real and personal, of the corporation, and stating that it is the wish of the petitioners to dissolve the corporation.

Proceedings to vacate charter. §§ 3417 et seq.

[Private corporation organized under the general law may be dissolved by act of stockholders, without obtaining consent of the State. *M. & P. Line v. Wagoner*, 71 Ala. 581; s. c., 19 Am. Corp. Cas. 12.

Necessary averments of bill to show necessity for appointment of receiver. *E. L. & P. Co. v. Hanby*, 101 Ala. 15; s. c., 13 So. Rep. 343.

Above section does not impair obligation of contract entered into while statute in force. *Nelson v. Hubbard*, 96 Ala. 238; s. c., 11 So. Rep. 428.

A furnace company is a private corporation within meaning of above section. *Wolfe v. Underwood*, 91 Ala. 523; s. c., 8 So. Rep. 774.

After dissolution creditors can enforce their rights only in the mode prescribed. *Nelson v. Hubbard*, supra.]

§ 1292. Upon the filing of such petition, the register shall give notice by subpoena to all the stockholders not joining in the petition to appear within thirty days after service and contest the same; and if any stockholder residing out of the State does not join in the petition, he shall be made a party by advertisement in the manner non-resident defendants in chancery are made parties, and he has thirty days after the perfecting of such notice to answer and contest the petition.

§ 1293. If at a regular term of the chancery court, after the cause is at issue, it be made to appear to the chancellor that a majority of the stockholders still wish to dissolve the corporation, proof being made as in chancery cases, the chancellor shall decree the corporation dissolved.

Judgment of forfeiture. § 3433.

[When existence is not limited by charter, and there is no voluntary surrender of franchises, corporation is not to be deemed dissolved until dissolution is judicially ascertained. Neither insolvency nor sale of all its property, nor cessation of business extinguishes its franchises. *Davis v. R. Co.*, 87 Ala. 633; s. c., 6 So. Rep. 140.

Prosecution and final decree of a proceeding to dissolve a corporation is sufficient proof of a continued desire for its dissolution by a petitioner. *Wolfe v. Underwood*, 97 Ala. 375; s. c., 12 So. Rep. 234.]

§ 1294. Upon decree of dissolution, the chancellor shall appoint a receiver of all the property and assets of the corporation. The chancellor shall direct the receiver to collect, by suit or otherwise, all the debts due the corporation, and sell property, real or personal, belonging to the corporation, and how he shall make title thereto to the purchaser; the chancellor may, in his discretion, authorize the receiver to proceed, without suit, to sell any or all of the debts and assets of the corporation at public sale for cash, or on such terms as in his judgment the interest of the parties may require.

[Liability of stockholder for debts of a corporation becomes primary and absolute on dissolution of corporation; and a bill in equity will lie to enforce such liability, without averring insolvency of corporation, and without previous suit against it. *Spence v. Shapard*, 57 Ala. 598; s. c., 6 Am. Corp. Cas. 118.

A private corporation is a trustee for benefit of its creditors, and afterward for benefit of its stockholders. *R. R. Co. v. Branch*, 59 Ala. 139; s. c., 6 Am. Corp. Cas. 136.

An insolvent corporation cannot prefer a debt to one of its directors. *Gibson v. Furniture Co.*, 96 Ala. 357; s. c., 11 So. Rep. 365; *Rubber Co. v. Scott Co.*, 96 Ala. 439; s. c., 11 So. Rep. 370.

Powers of receiver appointed pending proceedings for dissolution. *E. L. & P. Co. v. Hanby*, 101 Ala. 15; s. c., 13 So. Rep. 343. Validity of his appointment cannot be questioned collaterally. 1d. Power of receiver to carry out existing contracts. 1d.

Property of an insolvent corporation is not a trust estate in hands of the corporation for its creditors. *Jewelry Co. v. Voller*, 17 So. Rep. 525; *Barrett v. Pollak*, 18 id. 615.

When receiver should not be appointed at instance of stockholder and creditor of corporation. *Coal Co. v. Hooper*, 105 Ala. 665; s. c., 17 So. Rep. 118.

§ 1295. The person nominated by the majority of the stockholders must be appointed receiver, if they can agree; but if they fail to agree for ten days after the decree of dissolution, the chancellor, in term time or vacation, or the register in his absence, must appoint such receiver, requiring proper bond and sureties for the performance of his duties.

§ 1296. In the performance of his duties under the decree, the receiver shall pay the debts of the corporation in full or ratably, as the funds realized may permit. If any claim is contested, it must be filed by the claimant in the court, and the genuineness thereof ascertained as in other contested claims in chancery. The residue, after the debts and costs are paid, shall be divided among the stockholders according to the amount of stock owned by each.

§ 1297. Any party dissatisfied with the decree of dissolution may appeal, giving bond and sureties, as prescribed by the chan-

cellor, and approved by the chancellor or register.

[§§ 1291-1297 construed. *Nelson v. Hubbard*; *Cotton Mills v. Dimmick*, 96 Ala. 238; s. c., 11 So. Rep. 428.]

§ 1298. All corporations whose powers expire by limitation, or which are dissolved by forfeiture or any other cause, exist as bodies corporate for the term of five years after such dissolution, for the purpose of prosecuting or defending suits, settling their business, disposing of their property, and dividing their capital stock, but not for the purpose of continuing their business.

Or longer, upon application. § 1301.

[A right of action to enforce personal liability of stockholders accrues to creditors on dissolution of the corporation. Such dissolution is affected by execution of the general assignment, and followed by complete abandonment of its business; and statute of limitations in favor of stockholders, as against creditors, begins to run from date of such assignment. *McDonald v. Ins. Co.*, 85 Ala. 401; s. c., 5 So. Rep. 120.]

Stockholders of a dissolved private corporation, which carried on its business for eighteen years without interruption, were estopped from denying regularity of organization. *Id.*

A suit cannot be maintained against a dissolved corporation, unless by force of some statute it continues in existence to the extent of remaining liable to suit. *Nelson v. Hubbard*; *Cotton Mills v. Dimmick*, 96 Ala. 238; s. c., 11 So. Rep. 428.]

§ 1299. Upon the dissolution of any corporation, unless other persons are appointed by the general assembly, or by a court of competent authority, the managers of the business of the corporation at the time of its dissolution, by whatever name known, are the trustees of the stockholders and creditors, authorized to settle the affairs of the corporation, dispose of such property as is necessary to pay its debts, and divide among the stockholders money and property remaining after payment of such debts and the necessary expenses.

[At common law, upon dissolution of a corporation, all its real estate remaining unsold reverted to original grantor or his heirs. Debts due to and from the corporation were extinguished. *Paschall v. Whitsett*, 11 Ala. 472.]

These provisions do not take away the power of a private corporation, which has become insolvent, but whose charter has neither expired or been annulled or forfeited, to make a voluntary assignment for benefit of creditors. *Chamberlin v. Bromberg*, 83 Ala. 576; s. c., 3 So. Rep. 434.]

A practical, not a judicially ascertained, dissolution is meant. *McDonnell v. Ala. G. L. Ins. Co.*, 85 Ala. 401; s. c., 5 So. Rep. 120.]

Policyholders are creditors of a dissolved life insurance company. *Id.*

Above section held not to affect equity jurisdiction in regard to appointing receivers for corporations. *Weatherly v. Capital City Water Co.*, 22 So. Rep. 140.]

§ 1300. Such persons have authority to sue for and recover the debts and property of the dissolved corporation, in its corporate name, and are jointly and severally re-

sponsible to its creditors to the extent of the property which may come into their hands.

§ 1301. On proper application to the chancellor, the power of such trustee, or person appointed receiver of such dissolved corporation, may be continued for such length of time beyond such five years as the chancellor may judge necessary for the purposes contemplated in the three preceding sections.

See § 1298.

[Corporations whose charters expire by limitation, or are annulled, exist as bodies corporate for five years after dissolution, for the purpose of suit, etc. *Curry v. Woodward*, 53 Ala. 371.]

#### ARTICLE XVI. CONDITIONS UPON WHICH FOREIGN CORPORATIONS ARE PERMITTED TO BUSINESS IN THE STATE.

Sec. 1316. Foreign corporation must file instrument of writing designating agents and place of business in this State.

1317. Where filed.

1318. Unlawful for foreign corporation to transact business in this State before declaration filed; penalty.

1319. Unlawful to act as agent of foreign corporation before such declaration is filed; penalty.

1320. Solicitor must enforce penalties; commissions.

1321. Admission fees exacted of foreign corporations.

1322. Statement to be filed.

1323. Fee to be paid but once; failure to pay vitiates contracts.

1324. Exceptions.

§ 1316. Every corporation not organized under the laws of this State shall, before engaging in or transacting any business in this State, file an instrument of writing, under the seal of the corporation and signed officially by the president and secretary thereof, designating at least one known place of business in this State and an authorized agent or agents residing thereat; and when any such corporation shall abandon or change its place of business as designated in such instrument, or shall substitute another agent or agents for the agent or agents designated in such instrument of writing, such corporation shall file a new instrument of writing as herein provided, before transacting any further business in this State.

See Const., art. XIV, § 4, and note.

[The above act is a penal statute. *Ross v. Sec. Co.*, 101 Ala. 362; s. c., 13 So. Rep. 564.]

Mortgage to foreign corporations; when not controlled by above act. *Id.*

Action to recover the penalty may be brought in a city court, by its solicitors. *B. & L. Assn. v. State*, 99 Ala. 197.]

What is a proper compliance with laws as to foreign corporation filing declaration in office of secretary of State and distinguishing person as agent. *Falls v. Bldg. Co.*, 97 Ala. 417; s. c., 13 So. Rep. 25. This is entitled to great weight as a legislative interpretation of the constitutional provision (art. XIV, § 4), but "can neither add to nor take from the legal significance of its

## Foreign corporations; costs — Code, §§ 1317-1324, 1347.

meaning." *Farrior v. Security Co.*, 88 Ala. 275; s. c., 7 So. Rep. 200.

A certificate need not designate the store or office of such agent, but is sufficient if it designates the city where he resides. *McLeod v. L. & M. Co.*, 100 Ala. 496; s. c., 14 So. Rep. 409.

When a contract with a foreign corporation has been executed, no relief can be granted because such corporation had not complied with provisions of above statute. *Russell v. Jones*, 101 Ala. 261; s. c., 13 So. Rep. 145.

These provisions do not apply to every act done by foreign corporation here, but do apply to a loan of money here by foreign corporation engaging in business of lending money on mortgage, and prevent recovery by such corporation on note given for money borrowed, when failure to comply with those provisions is shown. *Mortg. Co. v. Nixon*, 95 Ala. 318; s. c., 10 So. Rep. 311.

Agent of foreign corporation which has not complied with constitutional and statutory provisions giving the right to do business in this State, cannot maintain an action to recover compensation for services rendered in procuring a loan from it. *Collier v. Davis*, 94 Ala. 456.

Judgment by default for such penalty may be recovered on proof of service on a person named as agent; and the penalty being necessarily the amount of the recovery, no writ of inquiry is necessary to assess the damages. *B. & L. Assn. v. State*, 99 Ala. 197; s. c., 13 So. Rep. 687.

Though a foreign corporation failed to comply with the conditions precedent to its doing business in the State, held, that after the foreclosure of a mortgage running to it under power, the purchaser obtained the legal title. *Shahan v. Tetoro*, 21 So. Rep. 951.]

§ 1317. Such instrument, when filed by a corporation engaged in any business of insurance, must be filed in the office of the State auditor, and when filed by a corporation engaged in any other business than that of insurance, must be filed in the office of the secretary of State.

§ 1318. It is unlawful for any foreign corporation to engage in or transact any business in this State before filing the written instrument provided for in the two preceding sections; and any such corporation that engages in or transacts any business in this State without complying with the provisions of the two preceding sections shall, for each offense, forfeit and pay to the State the sum of one thousand dollars.

§ 1319. It is unlawful for any person to act as agent or transact any business, directly or indirectly, in this State, for or on behalf of any foreign corporation which has not designated a known place of business in this State and an authorized agent or agents residing thereat, as required in this article; and any person so doing shall, for each offense, forfeit and pay to the State the sum of five hundred dollars.

§ 1320. Every penalty provided for in this article shall be sued for and recovered in the name of the State of Alabama, by the solicitor of the circuit or county in which the offense is committed; and when collected, must be paid by the solicitor into the State treasury for the use of the State, less twenty-five per cent. to be retained by such solicitor for his services. The attorney-general shall represent the State in such actions carried to the supreme court, and for his services therein is entitled to one-

half the commissions herein allowed to the solicitor.

§ 1321. No corporation created by the laws of any other State or of any foreign country shall engage in or transact any business in this State without first having paid into the treasury, for the use of the State, the following fees: Where the capital stock of such corporation does not exceed fifty thousand dollars, a fee of twenty-five dollars; where it exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars, a fee of fifty dollars; where it exceeds one hundred thousand dollars, but does not exceed two hundred and fifty thousand dollars, a fee of seventy-five dollars; where it exceeds two hundred and fifty thousand dollars, but does not exceed five hundred thousand dollars, a fee of one hundred dollars; where it exceeds five hundred thousand dollars, but does not exceed one million dollars, a fee of two hundred dollars; where it exceeds one million dollars, a fee of two hundred and fifty dollars. All corporations or mutual companies which have no capital stock shall pay a fee of twenty-five dollars.

§ 1322. Such foreign corporation shall, at the time of paying such fee into the treasury, file in the office of the State auditor, an instrument of writing under the seal of the corporation and signed officially by the president and secretary thereof, showing the name of the corporation and the State or country under whose laws it was incorporated, its principal place of business and the amount of its capital stock.

§ 1323. The fee required by the second preceding section shall be paid once, only; but such payment does not relieve any foreign corporation from the duty of complying with the requirements of existing laws. All contracts made in this State by any foreign corporation which has not first complied with the provisions of the two preceding sections, shall, at the option of the other party to the contract, be wholly void.

§ 1324. The provisions of this article do not apply to corporations organized under the laws of the United States; nor to corporations engaging in or transacting business of interstate commerce only within the State.

## CHAPTER XXIX.

## Costs and Fees.

## ARTICLE 2. SECURITY FOR COSTS.

Sec. 1347. Non-residents must give security for costs.

§ 1347. All suits at law or in equity, commenced by or for the use of a non-resident of this State, must be dismissed on motion, if security for the costs, approved by the clerk or register, be not given by such non-resident when the suit is commenced, or within such time thereafter as the court may direct.

See § 534.

## CHAPTER XLVI.

## Evidence.

## ARTICLE 1. GENERAL RULES.

Sec. 1803. When proof of corporate existence not required.

§ 1803. When suit is brought by a corporation, or by partners, the plaintiff must not be required to prove the existence of the corporation, or the firm, or the individuals composing it, unless the same is denied by plea verified by affidavit filed within the time allowed for filing pleas in abatement.

[See *Moore v. Burns*, 60 Ala. 269. Above section does not apply to pleas filed before its passage as amended, "though, as it relates only to the remedy, it would operate upon proceedings taken after its passage in the case then pending." *Bank v. Johnson*, 90 Ala. 549; s. c., 8 So. Rep. 42. Under above statute, a plea denying plaintiff's corporate existence must be verified by affidavit. *Rosenberg v. Claffin Co.*, 35 Ala. 249; s. c., 10 So. Rep. 521.

Plea of null tiel corporation must be verified. *Smith v. Hiles-Carver Co.*, 107 Ala. 272; s. c., 18 So. Rep. 37.]

## CHAPTER LIV.

## Garnishments.

Art. 1. Garnishment defined; when and how issued and dissolved.

2. Answer of garnishee and proceedings thereon.

## ARTICLE 1. GARNISHMENTS DEFINED; WHEN AND HOW ISSUED AND DISSOLVED.

Sec. 2182. Subscription for stock in corporation may be garnished.

§ 2182. Any creditor of a corporation may, by garnishment, subject the unpaid subscription of any stockholder in such corporation to the payment of its debts, without regard to whether the corporation can maintain suit against the stockholder for such subscription or not.

Limit of personal liability. Const., art. XIV, § 8. Suit by corporation to enforce subscription to stock. § 1254. See note to § 1298.

[A judgment creditor of a corporation may summon, in the same writ, two or more stockholders, who are severally indebted to the defendant corporation, for unpaid stock subscriptions. And this fact does not convert proceedings into a suit against them as joint debtors. *Curry v. Woodward*, 53 Ala. 371; s. c., 50 Id. 258; s. c., 44 Id. 305.

To subject stockholders to garnishment, it is not necessary that the corporation should at the time be engaged in business, or have persons in office as president and directors. *Id.* Unless an actual dissolution is shown, the corporation is still an "existing corporation" within the meaning of above section. *Id.* A call must be made, or the company evidently abandon its business, before statute of limitations begins to run in favor of stockholders. *Id.*

Personal notice need not be given or proved to fix liability of a defaulting subscriber to capital stock of corporation, when such personal notice

is not required either by the charter or the terms of the subscription. *Grubbs v. R. R. Co.*, 50 Ala. 398.

Identity of corporation, under changed name, in suit to enforce subscription to stock. *Semple v. Glenn*, 91 Ala. 245. Decree against corporation; conclusiveness against stockholders. *Id.*

Any arrangement entered into between a corporation and its stockholders, with the view of defeating claims of creditors, would be void both at law and in equity. *Goodwin v. McGhee*, 15 Ala. 232.

Capital stock of a corporation is a trust fund for payment of its debts, and a stockholder is not entitled to any dividend until all debts are paid. *Paschall v. Whitsett*, 1 Ala. 472.

When stockholders, after calls regularly made, are in default, a judgment creditor has complete remedy at law against them, and therefore will not, for this cause only, be allowed to proceed in equity. *Allen v. R. R. Co.*, 11 Ala. 437. But as to stockholders who are not in default, by reason of no call having been made, but whose subscriptions have not been paid, court of equity has jurisdiction to compel payment at instance of an execution creditor of the corporation. *Id.*

Unpaid subscriptions in hands of stockholders is part of the capital upon which creditors have rights, wherever it may be. A stipulation in the contract of subscription, that it shall be payable on the call of the company, is valid as between stockholders, and will not defeat rights of creditors. *Curry v. Woodward*, 53 Ala. 372.

Action at law does not lie against stockholders of a corporation, to enforce his liability, to the extent of his stock, for debts due by a corporation at the time of its dissolution. The remedy is in equity only. *Smith v. Huckabee*, 53 Ala. 191. This case distinguished in *Curry v. Woodward*, supra. Liability of stockholders for debts of corporation. *A. & M. Assn. v. Ins. Co.*, 70 Ala. 120; s. c., 9 Am. Corp. Cas. 8. Shares of stock in insolvent corporation; validity as to creditors. *Id.*

Unpaid subscription of stock may be reached and subjected by garnishment at suit of creditors of a corporation. *Woldridge v. Holmes*, 78 Ala. 568.

Subscription to stock in private corporation, payable on call by board of directors, and for which no call has been made, is not subject to garnishment at law at the suit of a creditor of the corporation, though it has become insolvent and practically dissolved. *Tengue v. LeGrand*, 85 Ala. 493; s. c., 5 So. Rep. 287. Books of corporation are evidence against stockholders in an action to enforce unpaid subscription. *Lehman v. Glenn*, 87 Ala. 618; s. c., 6 So. Rep. 44. When statute of limitations in favor of stockholders, as against the corporation or its creditors, begins to run. *Id.* Whether a judgment by default against garnishee should recite such return of an execution, or show that proof was made of the fact, is not decided. *Carroll v. Milner*, 93 Ala. 301; s. c., 9 So. Rep. 221. Necessary parties to bill to enforce liability of stockholders of dissolved corporation. *Friend v. Powers*, 93 Ala. 114; s. c., 9 So. Rep. 392.

Pledge of stock in private corporation, holding certificates as collateral security, and having had transfer duly entered on books, is liable to creditors as owner thereof, on subsequent insolvency and dissolution of corporation. *Bank v. McDonnell*, 92 Ala. 357; s. c., 9 So. Rep. 149. Stockholder of private corporation, when sued by its creditors, is estopped from denying its legal existence, or from insisting that its charter has been forfeited by non-compliance with statutory provisions for which a forfeiture might be declared. *Id.*

Husband subscribing for stock in name of wife becomes personally liable to creditors of corporation. *Id.*

Interest as against stockholders of dissolved corporation, in favor of creditors, begins to run on confirmation of register's report ascertaining amount of creditors' respective claims and the undivided liability of each stockholder. *Id.*

No relation of principal and sureties can exist between a corporation and its stockholders, as such. *R. R. Co. v. Nicholas*, 98 Ala. 92; s. c., 12 So. Rep. 723. Capital stock is a security for corporate creditors. *Janney v. Bank*, 98 Ala. 515;

## Summons; service — Code, §§ 2190, 3268-3277.

s. c., 13 So. Rep. 761. There is no discrimination against creditors who are also stockholders. *Id.* Relation of stockholder to corporation. *Id.* Capital stock is a trust fund in hands of directors. *Corey v. Wadsworth*, 99 Ala. 68; s. c., 11 So. Rep. 350. Officers or directors cannot be preferred creditors of an insolvent corporation. *Id.* A corporation is insolvent, when. *Id.* When subscriber to corporate bonds liable as garnishee. *Davis v. Chemical Co.*, 101 Ala. 127; s. c., 8 So. Rep. 496. Liability of subscriber to stock as garnishee. *White v. Kahn*, 15 So. Rep. 595.]

## ARTICLE 2. ANSWER OF GARNISHEE AND PROCEEDINGS THEREON.

Sec. 2190. Answer of corporation; by whom made.

§ 2190. No person shall answer, on behalf of any corporation, any process of garnishment, unless he shall make affidavit that he is the duly authorized agent of the corporation to make such answer.

[Although the answer of the agent is not accompanied with the prescribed affidavit, the defect is waived by the subsequent appearance of the corporation, recognizing his authority to answer for it. *R. R. Co. v. Whorley*, 74 Ala. 264.]

## CHAPTER XCI.

## Pleading and Practice.

## ARTICLE 1. THE SUMMONS.

Sec. 3268. Civil actions commenced by summons.

3274. How corporation served.

3275. Service on person or corporation operating railroad of a domestic corporation.

3276. Publication against domestic corporation, other than railroad corporation, having no officer or agent in the State.

3277. Service on designated agent of foreign corporation; proof of agency.

§ 3268. All civil actions in courts of record, except in such cases as are otherwise provided by this Code, must be commenced by the service of summons.

§ 3274. When the suit is against a corporation the summons may be executed by the delivery of a copy of the summons and complaint to the president or other head thereof, secretary, cashier, station agent, or any other agent thereof.

Service of summons in chancery. See p. 36. See § 1250, subd. 2, note. Service of process on indictment. § 5317.

[In suit against a corporation, any officer, agent or employee thereof, on whom summons and complaint may be executed, is competent to accept the service. *Ins. Co. v. Woodward*, 44 Ala. 287; s. c., 3 Am. Corp. Cas. 116. Acceptance of service by one as secretary of the corporation, not of itself sufficient evidence that he bears that relation to the corporation. *Id.*

In an action against a corporation, a return by the sheriff on summons and complaint that he had executed the same "by delivering a copy to G. A., managing agent for the defendant," is not sufficient to sustain a judgment by default. *Iron Co. v. Spradley*, 42 Ala. 24. What is necessary to sustain a judgment by default against a corporation. *Express Co. v. Carroll*, 42 Ala. 437; *Ins. Co. v. McCullough*, 42 id. 667; *Lyon v. Admrs.*, 3 id. 151; *R. R. Co. v. Cole*, 6 id. 655; *R. R. Co. v. Hartwell*, 43 id. 508.

A judgment by default against corporation must show that proof was made of the agency of per-

son before process was served. *R. R. Co. v. Whorley*, 74 Ala. 264.

Necessary proof of service of process to sustain judgment by default against corporation. *Ins. Co. v. Fowler*, 76 Ala. 372; *Bldg. Assn. v. Agee*, 99 id. 571; s. c., 13 So. Rep. 279.

Transcript of a decree rendered by a chancery court of Virginia, showing that process was served on cashier and directors, and that the court held this service sufficient to give jurisdiction over the corporation, is conclusive as to that fact, and cannot be here collaterally assailed. *Lehman v. Glenn*, 87 Ala. 618; s. c., 6 So. Rep. 44.]

§ 3275. Whenever any railroad corporation created by the authority of this State, shall permit its railroad to be used or operated by any other person or corporation, whether by contract or otherwise, process issuing against the person or corporation so using or operating such railroad, may be served upon any station agent or person in charge of any depot along the line of such railroad.

§ 3276. Whenever it is shown by affidavit that the president or other head of a domestic corporation, the secretary, cashier and managing agent thereof are absent from the State, and that in the belief of affiant there is no person in the employ of such corporation or doing business for it in this State, such corporation may be served with any legal process issuing from any court of record in this State, by publication in some newspaper published in the county where suit is brought, or, if there is no newspaper published in the county where suit is brought, in the newspaper published nearest the place of trial; and a copy of such newspaper containing such notice must be sent by mail to the president, secretary, cashier, or other agent of such corporation, at his place of residence, if known; and if such publication is perfected twenty days before the next term of the court, the case shall stand for trial at that term; otherwise at the succeeding term, or any other term after the perfection twenty days prior thereto. This section does not apply to railroad corporations.

§ 3277. When a foreign corporation has filed an instrument in writing designating one or more agents in this State as provided by this Code, process issuing against such foreign corporation may be served upon any agent so designated; and the certificate of the secretary of State, or of the auditor, as the case may be, showing such designation, is evidence of the fact of such agency. If the agent designated by such foreign corporation shall die, resign, remove from the State, or his authority shall cease from any cause, and no other agent shall be designated by such foreign corporation, the service of process issuing against it may be made upon the secretary of State, or, if the process be against an insurance company, upon the auditor; and the officer serving such process upon the secretary of State, or the auditor, as the case may be, must immediately transmit a copy thereof by mail to such corporation, at its home office, and state such fact in his return.

## CHAPTER XCIV.

## Quo Warranto — Actions in the Nature of.

Sec. 3417. Actions to vacate charters of corporations, by whom instituted, and grounds for.

3418. Judge of circuit court may direct solicitor to commence action; any person may sue on securing costs.

3419. In what county action to be brought.

3420. Action in name of State for usurpation of office or franchise.

3421. Judge of circuit court may direct action to be brought; any person may sue on securing costs.

3422. In what county action to be brought.

3423. When alleged corporation may be joined as party defendant without prejudice.

3424. Court always open on trial of cause for trial after five days' service of summons, postponement.

3425. Cause to be tried by the court unless jury demanded.

3426. Informant joined as plaintiff with the State.

3427. In whose name continued on death of informant; when it abates.

3433. On judgment of forfeiture, corporation dissolved; costs.

3437. Appeal; costs thereof.

3438. When appeal does not supersede execution of judgment unless bond be given.

3439. Appeal; when heard.

§ 3417. An action may be brought in the name of the State, against the offending corporation, on the information of any person for the purpose of vacating the charter, or annulling the existence of any corporation, other than municipal, whenever such corporation —

1. Offends against any of the acts creating, altering, or renewing such corporation.

2. Violates the provisions of any law, by which such corporation forfeits its charter, by abuse of its powers.

3. Has forfeited its privileges or franchises by failure to exercise its powers.

4. Has done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises.

5. Exercises a franchise or privilege not conferred on it by law.

Ultra vires. Const., art. XIV, § 5. Forfeiture by nonuser. § 1273. Failure to elect officers does not dissolve. § 1276. Voluntary dissolution. §§ 1291 et seq.

[A cause of forfeiture of franchise cannot be taken advantage of, or enforced against a corporation collaterally or incidentally, or in any other mode than by a direct proceeding for that purpose. *Hudgins v. State*, 46 Ala. 208; *Lehman v. Warner*, 61 id. 455; s. c., 6 Am. Corp. Cas. 155; *A. & M. Assn. v. Ins. Co.*, 70 Ala. 120; s. c., 9 Am. Corp. Cas. 8. On the creation of every corporation it is implied in law that misuser or non-user shall effect a forfeiture of charter. *State v. Bank*, 2 Stew. 30.

A corporation may consent to a forfeiture of its charter, though such consent can only be given by all the stockholders; and a statute, which declares a forfeiture with consent of the company, does not impair the obligation of contracts. *R. R. Co. v. State*, 29 Ala. 573.

The charter of a corporation cannot be declared void in a collateral proceeding, and evidence of fraud in procurement of charter is therefore inad-

missible in such proceedings. *Duke v. Nav. Co.*, 16 Ala. 372.

A corporation is not to be deemed dissolved, or its charter forfeited, by reason of any misuse or nonuse of its franchises, until the default has been judicially ascertained and declared; and this can only be done by the courts of the State by which its charter was granted. *Im. & Ex. Co. v. Locke*, 50 Ala. 332; s. c., 5 Am. Corp. Cas. 135. Courts of one State have no jurisdiction to decree forfeiture of franchises of a corporation organized under laws of another State. *Id.* An illegal intention upon part of original corporators, as to its purposes, does not invalidate the corporation from its inception or dissolve it after its formation. *Id.*

Infraction of the public statute is ground for forfeiture of chartered rights and cause of invalidity of contracts affected by the legal transaction, but the misuser of franchises will not warrant a decree of dissolution until default has been judicially ascertained. *Id.* Action under above section to forfeit franchise of a corporation cannot be brought when it appears that the corporation's office is out of the State, and that it is doing no business within the State. *State v. R. R. Co.*, 18 So. Rep. 801.]

§ 3418. The judge of the circuit court whenever he believes that any of these acts or omissions can be proved, and it is necessary for the public good, must direct the solicitor of the circuit or county to bring such action; or such action may be brought without the direction of such judge on the information of any person giving security for the costs of the action, to be approved by the clerk of the court in which the action is brought.

[Information in nature of quo warranto, to vacate charter of a corporation in absence of statutory regulation, can only be filed by the attorney-general, ex-officio. He is the representative of the State for this purpose. *State v. Council*, 30 Ala. 66.

An action to vacate charter of private corporation may be brought by any person giving security for costs without first obtaining order from a judge. *State v. Webb*, 97 Ala. 111; s. c., 12 So. Rep. 377.]

§ 3419. Such actions must be brought in the circuit court of the county in which the corporation has its principal office, or, if it has no principal office, of any county in which it does business, or, if it has no principal office and is doing no business in the State, such action may be brought in any county.

§ 3420. An action may be brought in the name of the State against the party offending, in the following cases:

1. When any person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this State, or any office in a corporation created by the authority of this State.

2. When any public officer, civil or military, has done or suffered an act, by which, under the law, he forfeits his office.

3. When any association, or number of persons, acts within this State as a corporation, without being duly incorporated.

[Action against individuals for fraudulent usurpation of corporate powers is properly brought against them, but corporation itself is not a

proper party defendant. *State v. Webb*, 97 Ala. 111; s. c., 12 So. Rep. 377. Corporate functions acquired by evasive compliance is a fraud upon law. *Id.*

See *State v. Mobile & Girard R. Co.*, 108 Ala. 29; s. c., 18 So. Rep. 801.]

§ 3421. The judge of the circuit court may direct such action to be brought when he believes that any of the acts specified in the preceding section can be proved, and it is necessary for the public good, or it may be brought without the direction of such judge on the information of any person giving security for the costs of the action, to be approved by the clerk of the court in which the action is brought.

§ 3422. Such action must be brought in the circuit court of the county in which the acts are done or suffered, or, if to try the right to a corporate office, in the circuit court of the county in which the corporation has its principal office, or, if it has no principal office, in any county in which it does business.

§ 3423. When the action is against persons acting as a corporation without being duly incorporated, the alleged corporation may be joined as a party defendant, and such joinder does not admit its corporate existence, or otherwise prejudice the case of the plaintiff; and judgment and execution may go against it by its alleged corporate name, as in other cases.

§ 3424. The court is at all times open for the trial of such cause or the granting of orders therein. The summons shall be returnable ten days from the date of issuance, and if five days' service is not had before such return-day, the summons is returnable to the first day after the expiration of five days after such service; and if such return-day be a day of any regular or special term of the court, the cause stands for trial on the next day after the return day, unless good cause be shown for further delay; but if such return-day does not fall within a regular or special term, the judge must fix a day for the hearing, of which the clerk must notify the parties or their attorneys; and on such day the case may be tried, or for good cause shown, or by consent of parties and the approval of the court, may be continued to another day.

§ 3425. Such cause must be tried by the court without a jury, unless a jury be demanded in writing, either by the relator at the time of filing the information, or by the defendant at the time of filing his answer; but by the consent of both parties a trial by jury may be had where previously waived, or may be waived where previously demanded by either party. If need be, the court or judge may order the sheriff to summon the requisite number of persons to serve as jurors.

§ 3426. Whenever an action is brought, under the provisions of this chapter, on the

information of any person, his name must be joined as plaintiff with the State.

§ 3427. On the death of such person pending the suit, it may be continued in the name of the surviving informant, or of any person who, on application, having first given security for the costs, is substituted in his place; but on the death of all the informants, if no person is substituted in their place, the action abates.

§ 3433. If it is adjudged that a corporation, against which an action has been brought under this chapter, has, by neglect or abuse, or surrender, forfeited its corporate rights, privileges and franchises, judgment must be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and be dissolved; and judgment for costs must be rendered against the persons claiming to be such corporation, and the directors or managers thereof, as established by the evidence; and execution shall be issued on such judgment at the expiration of five days from the date thereof, unless the defendant or the persons claiming to be such corporation shall, within such time, take an appeal to the supreme court.

§ 3437. The State, informant, or defendant, may appeal to the supreme court within ten days after judgment, on application to the clerk and giving security for the costs of the appeal; the names of the sureties to be certified, with the record, to the supreme court; and if the appeal is not sustained, judgment for costs may be rendered against such sureties; but in appeals by the State no security shall be required.

§ 3438. If the defendant is adjudged guilty of usurping, or intruding into, or unlawfully holding or exercising any public office, civil or military, or any office in a corporation created by the authority of this State, such appeal does not supersede the execution of the judgment, unless the party appealing shall execute bond, in a sum to be prescribed and with sureties to be approved by the presiding judge, payable to the State of Alabama, with condition that if he fail in the appeal he will pay such judgment as the supreme court may render in the premises, and all such costs and damages as any person may sustain by reason of a wrongful appeal and suspension of the execution of the judgment.

§ 3439. Such appeal must be heard by the supreme court on the first Thursday after the expiration of ten days from the date of the appeal, if the court be then in session; if not in session at the expiration of such ten days, the appeal shall be heard at the first opportunity thereafter during any term, or may be heard at a special term to be called by the court for such hearing, of which twenty days' notice must be given to the parties; but in no case shall such appeal be heard unless the citation of appeal has been served five days before the hearing.

## CHAPTER CX.

## Taxation.

- Art. 1. Definition of terms.  
 2. Exemptions from taxation.  
 3. Subjects, rates, maturity and lien of taxes.  
 5. Assessments; when and how made.

## ARTICLE 1. DEFINITION OF TERMS.

Sec. 3906. Meaning of words and phrases.

§ 3906. Whenever the terms mentioned in this section are employed in this chapter, they are employed in the following sense:

\* \* \* \* \*  
 5. The word "person," or "party," or other word or words, importing the singular number, shall be held to include firms, companies, associations and corporations;  
 \* \* \* \* \*

"Corporation" defined. Const., art. XIV, § 13. See Civ. Code, § 1, and note.

## ARTICLE 2. EXEMPTIONS FROM TAXATION.

Sec. 3908. Exemption of cotton factories from county and municipal taxation.

3909. Application for such exemption; how made and granted.

§ 3908. For the purpose of encouraging the building and operating of factories for the spinning of thread, yarns, and the weaving of cloth and other fabrics of cotton and wool in the State, the court of county commissioners, or board of revenue of any county, or the constituted authorities of any city or town, in which it is proposed to locate such factories, are authorized and empowered to remit the taxes assessed on such buildings, factories, machinery used therein, or land upon which such factories or buildings are located, for all county or city purposes, for a period not exceeding five years from the date of the incorporation or organization of such manufacturing company.

[A legislative bounty subject to repeal. *Calhoun Co. v. Woodstock I. Co.*, 82 Ala. 151; s. c., 2 So. Rep. 132.]

§ 3909. In order to obtain the benefits of such exemption, the person, firm or corporation owning or controlling such factory must make application in writing to the court of county commissioners or board of revenue of the county, or the constituted authorities of the city or town in which it is proposed to locate such factory, giving the location of the proposed factory, the date of the incorporation or organization and praying for an order to be made by them, granting such person, firm or corporation the exemption provided in the preceding section, which ap-

plication, if granted, shall be entered on the records of their courts, and an order made allowing such exemption and designating the time when such exemption shall expire; but all such property must be returned for State taxation.\*

## ARTICLE 3. SUBJECTS, RATES, MATURITY AND LIEN OF TAXES.

Sec. 3911. Subjects and rate of taxation.

§ 3911. For the use of this State, and to raise revenue therefor, there is levied an annual tax of fifty-five cents on each hundred dollars in value, upon the following property: \* \* \*

4. All stocks of goods, wares and merchandise, the assessment to be on the average amount on hand during the preceding year, but the amount so assessed shall in no case be less than the capital actually employed in the business nor less than sixty-six and two-thirds per cent. of the originally invoiced price of said goods, wares and merchandise to be taken and furnished to the tax assessor as hereinafter provided, and this shall include all goods, wares and merchandise kept on plantations or elsewhere or by railroad companies or manufacturing companies, or other associations, corporations or persons, for sale or to be dealt out to laborers or employees for profit, or on account of their wages; and shall include all goods, wares and merchandise offered for sale by any person commencing business subsequently to the first day of October of the current year, but in such case the tax shall be apportioned according to the date at which the business

\*An act approved February 13, 1897, "To promote and secure the erection of cotton mills and factories in the State of Alabama," is as follows:

"Section 1. Be it enacted by the general assembly of Alabama, That any person, copartnership, association of individuals, or corporations incorporated under the laws of the State of Alabama, that shall, within five years from the approval of this act, invest, expend, lay out and pay at least fifty thousand dollars in money in the erection, building and construction of cotton mills or factories in this State, and the buildings, plants, works, machinery, appliances, and appurtenances, proper or necessary for the practical operation of such cotton mills or factories, shall be entitled to claim and have exempt from assessment and collection for State, county and municipal taxation such cotton mills or factories, and the said proper or necessary buildings, plants, works, machinery, appliances and appurtenances for the period of ten years only from the approval of this act, and the same and every part of the same are hereby declared to be exempt from State, county and municipal taxes; Provided, nevertheless, That nothing in this act shall be construed to exempt from taxation the land on which said cotton mills or factories are erected; Provided, This act shall also apply to additions costing \$50,000 or more made to cotton mills now existing in Alabama.

"§ 2. Be it further enacted, That all laws and parts of laws, general or special, in conflict with the provisions of this act, be and the same are hereby expressly repealed." (*Lamph. Acts 1896-1897*, p. 917.)



shall be commenced, so that if commenced after the first day of January, the tax shall be three-fourths of the tax for the whole year; if commenced after the first day of April, the tax shall be one-half of the tax for the whole year, provided that the assessment herein provided for shall not include the products raised on the farms in the hands of the original producer. Every person, association or corporation carrying on such business, shall, between the first and tenth days of October in each year, make or cause to be made, a full and complete invoice of the various articles of said goods, wares and merchandise, with the value thereof, and in listing the taxes thereon, he shall present the same to the tax-assessor. If the person, association or corporation carrying on such business shall fail to make such invoice and present the same as herein required or shall fail to make return of the amount of stock as herein provided, or if the assessor is not satisfied with the return made, the assessor, in order to make a proper assessment, may examine the insurance effected by such person, association or corporation upon the stock so to be assessed, if the same can be ascertained, and may also by inquiry of persons believed to have knowledge of the subject by having assisted in taking invoice or otherwise, inform himself of the probable average amount of such stock; and from such information he may assess the same upon the best judgment he can form, and where assessments have been so made against a person, association or corporation, which has not complied with this subdivision, said assessments shall not be subject to revision at the instance of the taxpayer and shall in no case be reduced.

7. All moneyed capital, that is, all money lent, solvent credits, or credits of value; and all money employed in the business of advancing, or pending on any kind of chattels, choses in action, or personal property, or used in buying or discounting notes, bonds or bills of exchange.

8. Every share of any incorporated bank or banking association incorporated under the laws of this, or any other State, or of the United States, to be assessed and collected in the county, city, town or village where any such bank is located, and to be assessed at its actual market value to the person in whose name such share stands on the books of such bank and not to the bank or corporation. It is the duty of the president and cashier of every such bank or banking association to make out and return under oath to the assessor of the county in which the bank is located, a list showing the total number of shares of the capital stock of such bank, the full name and residence of every shareholder as far as known, the actual market value of such shares and the par value thereof, the date of the last sale of stock in such bank, with the names of the seller

and purchaser thereof, and the price paid for same, the annual dividend declared upon the stock of such bank for the last three years, the value of the shares as shown by the books of the corporation and by the last report of the officers to the shareholders, the amount of the surplus and the amount of the undivided profits not included in the surplus; and such president and cashier shall, at the same time return to the assessor of the county a sworn statement of all real estate owned by the bank, situated in this State, and the value thereof as assessed for taxation the same year, and thereupon it shall be the duty of the assessor, after passing upon such assessment, to deduct from the amount or sum at which the whole of the shares are assessed, the amount or sum at which the real estate, situated in this State and belonging to such bank, is assessed for taxation; and the residue of values remaining after such deduction shall be the assessed value of the whole of such shares, and such residue, divided by the whole number of shares, shall constitute the value of each share for taxation, and the bank shall pay for the shareholder, the tax assessed against such shares. It is the intent and meaning of this subdivision that the real estate of every such bank shall be assessed for taxation against the bank as other real estate in this State is assessed to the owner thereof, and that the bank shall pay the taxes thereon; and the shares shall be assessed for taxation against the shareholders at their actual market value after deducting therefrom the assessed value of the real estate of the bank, and that the bank shall pay for the shareholders, respectively, the tax so assessed against their shares. In arriving at the market value of the shares there must be considered everything which gives them value, such as the franchise, the authorized capital and assets of the bank, the real and personal property, the reserve fund, the surplus, the undivided profits, and all other interests of the shareholder that would pass to a purchaser on a transfer of his stock; and except as herein and expressly provided, no separate tax shall be levied upon these elements of value, or any of them. It shall be no ground of objection to such assessment of shares that it is entered upon the assessment-book in the corporate name of the bank.

9. Every share of any corporation organized under the laws of this State, or any other State, or of the United States (other than railroad, telegraph, express and sleeping-car companies, building and loan associations, and banks or banking associations) to be assessed and collected in the county wherein such corporation has its chief or home office in this State, and to be assessed at its actual market value, to the person in whose name such shares stand on the books of the corporation, and not to the corporation. It shall be the duty of the president or

chief officer of every such corporation to make out and return under oath, to the assessor of the county in which the chief or home office of the corporation is located, a list showing the total number of shares of the capital stock of such corporation, and the par value thereof, and the full name and residence of each shareholder as far as known, the actual market value of such shares and the par value thereof, the date of the last sale of stock in such corporation, with the names of the seller and the purchaser and the price paid for the same, the annual dividend declared on the stock of such corporation for the last three years, the value of the shares as shown by the books of the corporation and by the last report of the officers to the shareholders, the amount of the surplus, and the amount of undivided profits not included in the surplus, and such president or chief officer shall, at the same time, return to the assessor a sworn statement of all the taxable property, real and personal, owned by such corporation, situated in the State, and the value thereof as assessed for taxation the same year; and thereupon it shall be the duty of the assessor, after passing upon such assessments, to deduct from the aggregate amount or sum at which the whole of the shares are assessed the aggregate amount or sum at which the real and personal property of the corporation is assessed for taxation; and the residue of values remaining after such deduction shall be the assessed value of the whole of such shares, and such residue, divided by the whole number of shares, shall constitute the value of each share for taxation, and the corporation shall pay, for the shareholder, the tax assessed against his shares, and the amount so paid for any shareholder shall be a lien on any interest which shareholders may have in any property owned by the corporation. It is the intent and meaning of this subdivision that all the property, real and personal, of the corporation, except such property as is exempt from taxation by the laws of the State or of the United States, shall be assessed for taxation against the corporation as other property in this State is assessed to the owner thereof, and that the corporation shall pay the tax thereon whether such assessment exceeds the aggregate assessed value of the shares or not; that the shares shall be assessed for taxation against the shareholders, at their actual market value after deducting therefrom the assessed value of the real and personal property of the corporation, and that the corporation shall pay for the shareholders, respectively, the tax so assessed against their shares. If the aggregate value of the shares does not exceed the aggregate value of the real and personal property of the corporation as assessed for taxation, then on tax shall be demanded or collected

on the shares. It shall be no ground of objection to such assessment of shares that the same is entered on the assessment-book in the name of the corporation.

\* \* \* \* \*

13. All dividends declared or earned, and not divided, by corporations doing business in this State.

14. All other property, real and personal, not otherwise specified herein, including cotton, pig-iron, manufactured goods and other things of value.

#### ARTICLE 5. ASSESSMENTS; WHEN AND HOW MADE.

Sec. 3936. Full statement of subjects of taxation required of taxpayers.  
3942. By whom property should be listed.

§ 3936. Every person of full age and of sound mind, and every firm and body corporate or politic shall, when legally called on by the assessor, forthwith make to him a full, true and distinct statement of all the real and personal property, with a correct description thereof, of which he is the owner or holder, individually, or as guardian, parent, husband, trustee, administrator, executor, receiver, accounting officer, partner, agent, or factor, and including all moneys and credits so held or owned, or on deposit anywhere in the State, on the first day of October preceding, except as herein otherwise prescribed.

§ 3942. The property \* \* \* of those whose property is in the hands of receivers, (shall be listed), by such receivers; of every firm, or body corporate or politic, by the partner, president, principal officer or agent thereof; \* \* \* and all persons herein required to list property for others shall list it separately from their own, and in the name of the owner thereof.

#### CHAPTER CXIV.

##### Venue.

#### ARTICLE 1. VENUE OF ACTIONS.

Sec. 4207. Corporation sued where.

§ 4207. A foreign or domestic corporation may be sued in any county in which it does business by agent.

See § 1256, subd. 2, note; Const., art. XIV, § 4; §§ 1316 et seq.

#### RULES OF PRACTICE IN CHANCERY COURTS.

21. Domestic corporations may be served with process by executing it upon the president, or other head thereof, secretary, cash-

ier, or managing agent thereof. If affidavit is made that the officers named in the preceding part of this rule are unknown, absent from, or reside out of the State, the process may be served upon any white person in the employ of such corporation, or doing business for it. Process may be served on foreign corporations by executing it upon any agent of such corporation, or white person in its employ in this State, or by publication, a copy of which may be sent to any of the officers named in the first part of this rule. If a summons to answer a bill is personally served on the agent or person in the employ of such foreign corporation,

such agent or employe may be required to answer on oath, as in case of other defendants to bills, and under like penalties.

Summons, how served on a corporation. Code, § 2274. See § 1256, subd. 2, cross-references.

[In suit against a corporation, any officer, agent or employe thereof, on whom summons and complaint may be executed, is competent to accept service. *Ins. Co. v. Woodward*, 44 Ala. 287; s. c., 3 Am. Corp. Cas. 116. Acceptance of service by one as secretary, not of itself sufficient evidence that he bears that relation to the corporation. *Id.*

What officers are necessary parties to bills of discovery against a corporation. *V. & A. M. & M. Co. v. Hale*, 93 Ala. 542; s. c., 9 So. Rep. 256; *Le Grand v. McKenzie*, 110 Ala. 493; s. c., 20 So. Rep. 131.]

## THE CRIMINAL CODE.

### CHAPTER CLIII.

#### Forgery and Counterfeiting.

Sec. 4721. Counterfeiting or forging corporate seal.

§ 4721. Any person, who, with intent to defraud, counterfeits or forges the seal of \* \* \* any corporation incorporated under the authority of this State, or falsely makes, forges, or counterfeits any impression purporting to be the impression of any such seal, is guilty of forgery in the second degree.

Corporate seal. §§ 1144, 1256.

### CHAPTER CLIV.

#### Frauds.

#### ARTICLE 6. DEPRECIATING STOCK OR BONDS OF CORPORATION WITH INTENT TO BUY.

Sec. 4776. Depreciating stock or bonds of corporation with intent to buy.

§ 4776. Any president, director, or managing officer of any corporation, by whatever name or title he may be known or called, who shall do or omit to do any act, or who shall make any declaration or statement in writing, or otherwise, with the intent to depreciate the market value of the stock or bonds of such corporation, and with the further intent to enable such president, director, or other managing officer, to buy any such stock or bonds at less than the real value thereof, must, on conviction, be fined not more than five hundred dollars, and shall be sentenced to hard labor for the county for not less than six nor more than twelve months.

### CHAPTER CLXXX.

#### Proceedings After Indictment; Trial and its Incidents.

#### ARTICLE 17. PROCESS ON INDICTMENT AGAINST CORPORATION; TRIAL AND JUDGMENT.

Sec. 5316. Indictment against corporation to be docketed and notice issued.

5317. How notice and copy served; when case stands for trial.

5318. Defendant failing to plead, plea of not guilty entered.

5319. Upon conviction judgment rendered for fine and costs and execution issued.

§ 5316. When an indictment is returned against a corporation doing business in this State, such indictment shall be forthwith docketed, and the clerk of the court shall issue a notice thereof to the defendant corporation, accompanied by a certified copy of the indictment.

§ 5317. Such notice and copy may be served upon any officer or agent of the defendant corporation authorized by law to receive service of summons or other civil process issuing against such corporation, and upon the return of the sheriff showing proper service, the indictment stands for trial.

§ 5318. If the defendant corporation fails to appear and plead to the indictment, the court must cause the plea of not guilty to be entered for it; and the trial shall proceed as if the corporation had appeared and pleaded not guilty; but in such case proof must be made to the court that the person upon whom the notice and copy of the indictment were served was an officer or agent of the corporation authorized by law to receive such service.

§ 5319. Upon the conviction of such corporation, judgment shall be rendered against it for the fine imposed, together with the costs of the prosecution, and execution thereon shall forthwith issue against the property of the corporation; and other executions may issue thereon until such judgment is satisfied. But in case of appeal from such judgment, the execution thereof may be superseded as in civil cases.



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# ARKANSAS.

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## LEGISLATIVE ACTS SUBSEQUENT TO 1884.



# ARKANSAS.

## CONSTITUTION OF ARKANSAS—1874.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE II.

##### Declaration of Rights.

- Sec. 17. Laws impairing the obligation of contracts prohibited.
22. Private property not to be taken without just compensation.

#### ARTICLE V.

##### Legislative.

- Sec. 33. No liability or obligation of any corporation shall be released by the State.

#### ARTICLE XII.

##### Private Corporations.

- Sec. 1. Existing charters under which organization shall not have taken place to have no validity.
2. No special act conferring corporate powers to be passed.
5. No county, town or municipality shall become a stockholder.
6. Corporations may be formed under general laws, which may be altered or repealed.
7. State not to become a stockholder.
8. No stock or bonds to be issued except for money, property or labor done. Fluctuations increase of stock or indebtedness is void.
9. Right of way not to be appropriated until compensation is made.
10. Bills and notes not to circulate as money.
11. Foreign corporations may do business in this State. *Proviso.*
12. State shall never assume liability of a corporation, nor shall indebtedness to State be released.

#### ARTICLE XVI.

##### Taxation.

- Sec. 7. Power to tax corporations not to be surrendered or suspended.

#### ARTICLE II.

##### Declaration of Rights.

- § 17. No \* \* \* law impairing the obligation of contracts shall ever be passed;  
\* \* \*

See Const., art. XII, § 6; art. XVI, § 7; Statutes, §§ 991, 1035.

- § 22. \* \* \* Private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.

See Const., art. XII, § 9.

[Above provision is necessarily implied in the preamble to the Constitution, and in several other

articles. Ex parte Martin, 13 Ark. 198. Until just indemnity is afforded to a party, his property cannot be taken. *Id.*; see Roberts v. Williams, 15 Ark. 43. Right of way acquired under charter of a corporation cannot be affected by subsequent constitutional provision. R. R. Co. v. Turner, 31 Ark. 435.]

#### ARTICLE V.

##### Legislative.

§ 33. No obligation or liability of any railroad or other corporation held or owned by this State shall ever be exchanged, transferred, remitted, postponed or in any way diminished by the general assembly; nor shall such liability or obligation be released except by payment thereof into the State treasury.

See Const., art. XII, § 12.

#### ARTICLE XII.

##### Private Corporations.

§ 1. All existing charters or grants of special or exclusive privileges under which a bona fide organization shall not have taken place and business been commenced in good faith at the time of the adoption of this Constitution shall thereafter have no validity.

§ 2. The general assembly shall pass no special act conferring corporate powers, except for charitable, educational, penal or reformatory purposes, where the corporations created are to be and remain under the patronage and control of the State.

General Laws, §§ 960-991.

[Applied in Little Rock v. Parish, 26 Ark. 175. The legislature is the judge of the necessity of special legislation. *Powell v. Darden*, 61 Ark. 21.]

§ 5. No county, city, town or other municipal corporation shall become a stockholder in any company, association or corporation; or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual.

See § 7, post.

§ 6. Corporations may be formed under general laws, which laws may, from time to time, be altered or repealed. The general assembly shall have the power to alter, re-

voke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the corporators.

General Law, §§ 960-961.

§ 7. Except as herein provided, the State shall never become a stockholder in, or subscribe to, or be interested in, the stock of any corporation or association.

See § 5, ante.

§ 8. No private corporation shall issue stocks or bonds, except for money or property actually received or labor done, and all fictitious increase of stock or indebtedness shall be void; nor shall the stock or bonded indebtedness of any private corporation be increased, except in pursuance of general laws, nor until the consent of the persons holding the larger amount in value of stock shall be obtained at a meeting held after notice given for a period not less than sixty days, in pursuance of law.

§ 9. No property, nor right of way, shall be appropriated to the use of any corporation until full compensation therefor shall be first made to the owner, in money, or first secured to him by a deposit of money, which compensation, irrespective of any benefit from any improvement proposed by such corporation, shall be ascertained by a jury of twelve men, in a court of competent jurisdiction, as shall be prescribed by law.

See Const., art. II, § 22, and note.

[Property cannot be taken under this section for private purposes. *Roberts v. Williams*, 15 Ark. 43. Provision has no application to a charter previously granted, in so far as it undertakes to change the mode of acquisition of property contained in such charter. *C. & F. R. Co. v. Trout*, 32 Ark. 18; *Same v. Turner*, 31 id. 494. For full discussion of power to take private property for public use, see *Ex parte Martin*, 13 Ark. 198. Right of way required under charter of a corporation cannot be affected by subsequent constitutional amendment. *R. R. Co. v. Turner*, 31 Ark. 495. The owner's damages for the right of way to a railroad over his land cannot be diminished by estimated benefit likely to accrue to his remaining property. *R. R. v. Anderson*, 39 Ark. 167.]

§ 10. No act of the general assembly shall be passed authorizing the issue of bills, notes or other paper which may circulate as money.

§ 11. Foreign corporations may be authorized to do business in this State under such limitations and restrictions as may be prescribed by law. Provided, That no such corporation shall do any business in this

State except while it maintains therein one or more known places of business and an authorized agent or agents in the same upon whom process may be served; and, as to contracts made or business done in this State, they shall be subject to the same regulations, limitations and liabilities as like corporations of this State, and shall exercise no other or greater powers, privileges or franchises than may be exercised by like corporations of this State, nor shall they have power to condemn or appropriate private property.

See Statutes, § 4982, and Act of 1887, at p. 15. "Foreign corporation" defined, § 6354.

[A corporation of another State is not a "person beyond the limits of this State" in meaning of § 13, ch. 91, R. S., concerning limitations, but is a "person residing beyond the limits of this State," within the meaning of § 14, ch. 99. *Clarke v. Bank*, 10 Ark. 516.

Statute of limitations as applied to foreign corporations. *Bank v. Armstrong*, 12 Ark. 602.

Existence of foreign corporations is a question of fact for jury. *Lindauer v. Ins. Co.*, 13 Ark. 461.

Proof of organization of foreign corporation. *Lindauer v. Ins. Co.*, 13 Ark. 461; *Finley v. Council*, etc., 10 id. 425.

When foreign corporation may collect rent of land in State. *Lumber Co. v. S. W. Imp. Co.*, 55 Ark. 625; s. c., 18 S. W. Rep. 1055.

Right of foreign corporation to do business in State. *Gunn v. Sewing Machine Co.*, 57 Ark. 24; s. c., 20 S. W. Rep. 591.

In a suit by a foreign corporation, the plea puts in issue its existence. *Plankroad Co. v. Banese & Brown*, 21 Ark. 306; and *Same v. Rieves et al.*, id. 302. See, also, 12 id. 772, and 10 id. 423. Foreign corporation may litigate in this State. *Railway v. Fire Assn.*, 55 Ark. 463; s. c., 18 S. W. Rep. 43. Presumption that foreign corporation has complied with the law. *Id.*

Foreign loan corporation not doing business in State, when. *Seruges v. Mortgage Co.*, 54 Ark. 566; s. c., 16 S. W. Rep. 563.

Above section is not self-executing. *Sherwood v. Wilkins*, 45 S. W. Rep. 988.]

§ 12. Except as herein otherwise provided, the State shall never assume or pay the debt or liability of any county, town, city or other corporation whatever, or any part thereof, unless such debt or liability shall have been created to repel invasion, suppress insurrection or to provide for the public welfare and defense. Nor shall the indebtedness of any corporation to the State ever be released or in any manner discharged save by payment into the public treasury.

See Const., art. V, § 33.

## ARTICLE XVI.

### Taxation.

§ 7. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State may be a party.

See §§ 5113, 5645, 5646.

## STATUTES OF ARKANSAS — 1884.

## CHAPTER I.

## Administration.

Sec. 104. Verification by corporation of demands against estates.

105. Sufficiency of affidavit by officer of a corporation.

§ 104. In case of a debt due a corporation, the cashier or treasurer shall make the affidavit required in the preceding section.\*

Verification of pleadings by corporation. § 5056.

§ 105. When an affidavit shall be required to be made by an officer of a corporation, \* \* \* it shall be sufficient to state in such affidavit "that he has made diligent inquiry and examination, and that he does verily believe that nothing has been paid, except the amount credited, and that the sum demanded is justly due."

[An affidavit by an officer of a corporation in a form prescribed by statute, omitting the words "that the sum demanded is justly due," is sufficient. *State v. Collins*, 16 Ark. 32.]

## CHAPTER IX.

## Attachments.

Sec. 309. When and for what causes obtained.

320. By whom and how executed.

321. Number of shares of defendant in incorporated companies furnished sheriff on pain of contempt.

§ 309. The plaintiff in a civil action may, at or after the commencement thereof, have an attachment against the property of the defendant, in the cases and upon the grounds hereinafter stated, as a security for the satisfaction of such judgment as may be recovered:

First. In an action for the recovery of money, where the action is against —

1. A defendant or several defendants who, or some one of whom, is a foreign corporation or a nonresident of the State.

8. \* \* \* An attachment shall not be granted on the ground that the defendant or defendants, or any of them, is a foreign corporation or nonresident of this State for any claim other than a debt or demand arising upon contract.

See § 5005.

[In proceedings by attachment against property of nonresident, the statute must be strictly followed. *Bush v. Visant*, 40 Ark. 124.]

§ 320. The order of attachment shall be executed by the sheriff or other officer without delay, in the following manner:

Third. Upon other personal property† by delivering a copy of the order, with a notice specifying the property attached, to the person holding the same; \* \* \* as to stock in a corporation, or property held, or a debt or

demand owing by it, to the chief officer, or to the secretary, cashier, treasurer or managing agent thereof, and by summoning the person or corporation to answer as a garnishee in the action. The sheriff shall deliver copies to and summon such persons as garnishees as the plaintiff may direct.

See Act of 1891, at p. 16.

§ 321. It shall be the duty of every person mentioned in the third subdivision of the last section, to whom the sheriff shall apply therefor, to furnish him with a certificate of the number of shares of the defendant in the stock of the corporation, a description of the property held by such corporation or person belonging to or for the benefit of the defendant, or the amount of the debt owing to the defendant by such corporation or person, whether due or not; and a failure to perform this duty may be punished by the court as a contempt.

## CHAPTER XXIX.

## Corporations.

II. Corporations for manufacturing and other lawful business.

VII. Dissolution of corporations.

## II. CORPORATIONS FOR MANUFACTURING AND OTHER LAWFUL BUSINESS.

Sec. 960. Corporation to carry on any lawful business, who may form.

961. Capital stock, amount of shares.

962. Purposes of corporation to be stated.

963. First meeting of stockholders.

964. Board of directors, when elected; term.

965. Failure to elect not to dissolve corporation.

966. Officers, how elected; to reside and keep offices, where.

967. Vacancy, how filled.

968. To file copy of articles of association, where; what to state; copy evidence, when.

969. Quorum, what.

970. Calls on stock, by whom made; how collected.

971. Annual report, what to contain; where filed.

972, 973. General corporate powers.

974. Books open to inspection, where kept.

975. Stock, how transferred; lien on.

976. Articles of association amended, how.

977, 978. To be recorded.

979. Certificates required to be under oath.

980. President and secretary liable, when and for what.

981. Stockholders liable, when.

982. Directors liable, when.

983. Officers generally liable, when.

984, 985. Insolvent; directors liable, when.

986, 987, 988. Lien on stock, foreclosed how.

989. Other liens not to be affected by.

990. May remove place of business, how.

991. Power of legislature over.

§ 960. Any number of persons, not less than three, who, by articles of agreement in

\*Affidavit to claim against an estate.

† Other than that capable of manual delivery.

writing, have associated, or shall associate, according to the provisions of this act, under any name assumed by them, for the purpose of engaging in or carrying on any kind of manufacturing, mechanical, mining or other lawful business, and who shall comply with all the provisions of this act, shall, with their successors and assigns, constitute a body politic and corporate, under the name assumed by them in their articles of association.

See Const., art. XII, §§ 2, 6.

[Classification of corporations into public and private. *State et al. v. Curran*, 12 Ark. 321.

Quasi corporation distinguished from corporation. *Carson v. St. Francis Levee District*, 50 Ark. 513; s. c., 27 S. W. Rep. 590.

Acts done by or to a corporation, by a name substantially its true name, though differing from it in words and syllables, are valid. *Bower et al. v. Bank*, 5 Ark. 254.

Proof of organization as required by the charter, and exercise of corporate powers, is prima facie evidence that the conditions precedent to corporate existence had been complied with. *Pleik-road Co. v. Reeves*, 23 Ark. 302; *Hammitt v. R. R. Co.*, 20 Id. 204. Corporate existence proved by general reputation. *Fleener v. State*, 58 Ark. 98; s. c., 23 S. W. Rep. 1. Maker of note held by bona fide indorsee cannot question corporate existence of payee. *Reynolds v. Roth*, 61 Ark. 517.]

§ 961. The amount of capital stock in every joint-stock corporation shall be fixed and limited by the stockholders in their articles of association, and shall be divided into shares of twenty-five dollars each; but every such corporation may increase its capital stock, and the number and amount of shares therein, at any meeting of the stockholders specially warned for that purpose.

Shares, how levied on. §§ 3003, 3001. How sold on execution. § 3074. Execution against, how executed. §§ 3080-3006. Shares listed for taxation. §§ 5645, 5646. Transfer of stock, how made. § 975. Lien on stock. §§ 986-988. Act authorizing corporation to reduce its capital stock. See p. 17.

§ 962. The purpose for which every such corporation shall be established shall be distinctly and definitely specified by the stockholders in their articles of association, and it shall not be lawful for said corporation to direct its operations or appropriate its funds for any other purpose.

Powers of corporations. §§ 972, 973, and notes. Fees for filing articles. § 3228.

§ 963. When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the corporation, at such time and place as they may appoint, by giving notice thereof in any one or more newspapers published in the county in which such corporation is to be established, or in any adjoining county, at least fifteen days before the time appointed for such meeting. But said notice may be waived by a writing, signed by all the subscribers to the capital stock of such company, specifying the time

and place for said first meeting, which writing shall be entered at full length upon the records of the corporation; and the first meeting of such corporation, which has been held pursuant to such written waiver of notice, shall be valid.

§ 964. The stock, property, affairs and business of every such corporation shall be under the care of, and shall be managed by, not less than three directors, who shall be chosen annually by the stockholders, at such time and place as shall be provided by the by-laws of said corporation, and who shall be stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead.

Directors individually liable, when. §§ 982, 983, 984.

[Purchase of assets of corporation by a director not void but voidable. *Jones et al. v. Ark. M. & A. Co.*, 38 Ark. 17.

Majority of directors cannot act where others had no notice; hence cannot make assignment of property. *Simon v. Levier Assn.*, 54 Ark. 58; s. c., 14 S. W. Rep. 1101. Nor mortgage property. *Bank v. McCarthy*, 55 Ark. 473; s. c., 18 S. W. Rep. 759. How notice should be given. *Id.*]

§ 965. If an election of directors in any such corporation shall not take place at the annual meeting thereof in any year, such corporation shall not thereby be dissolved, but an election may be had at any time within one year, to be fixed upon, and notice thereof to be given by the directors.

§ 966. The directors of every such corporation shall choose one of their number to be president, and shall also choose a secretary and treasurer, which two last-mentioned officers shall reside and have their place of business and keep the books of said corporation within this State, and shall choose such other officers as the by-laws of the corporation shall prescribe; all of which said officers shall hold their offices until others shall be chosen in their stead.

President and secretary personally liable, when. § 980. Officers generally, when. § 983.

§ 967. The directors of such corporation, for the time being, shall have power to fill any vacancy which may happen in their board by death, resignation or otherwise for the current year.

§ 968. Before any corporation, formed and established by virtue of the provisions of this act, shall commence business, the president and directors thereof shall file a true copy of their articles of association, at full length, and also a certificate setting forth the purpose for which such corporation is formed, the amount of its capital stock, the amount actually paid in, and the names of its stockholders, and the number of shares by each respectively owned, with the secretary of State, and a duplicate thereof with the clerk of the county in which such corporation is to transact business. Said articles of association and certificate shall be signed by the

## Manufacturing, etc., corporations — Stat., §§ 969-972.

president and a majority of the directors; and said secretary and county clerk shall respectively record the same in books to be kept by them for that purpose, and, within thirty days after the payment of any installment called for by the directors of such corporation, a certificate thereof shall be made, signed, filed and recorded as aforesaid. A copy of the certificate first specified in this section, certified by the secretary of this State, under the seal thereof, shall be received in all courts as prima facie evidence of the due formation, existence and capacity of such corporation in any suit brought by or against the same.

Requirements of foreign corporations. See Act of 1887, at p. 15. Articles may be amended. §§ 976-979.

[Court bound to take judicial notice of act creating corporation, and of powers therein defined. *Finley v. Council*, 10 Ark. 423.

Individuals cannot do business as a corporation until their articles of association are filed. For purchases made by them before that time they are personally liable as partners. *Garnett et al. v. Richardson et al.*, 35 Ark. 144; see *Connor v. Abbott*, id. 365.

When an act of incorporation requires nothing to be done by the trustees named in it, as a condition precedent to their becoming a corporation, they become such immediately upon its passage. *Blackwell v. State*, 36 Ark. 178; vide 29 Ark. 294.]

§ 969. A majority of the directors of every such corporation, convened according to the by-laws, shall constitute a quorum for the transaction of business, and a majority of the stockholders present at any legal meeting shall be capable of transacting the business of that meeting; and at all meetings of such stockholders each share shall entitle the holder thereof to one vote.

[By the common law a majority of the trustees of a corporation is necessary to constitute a quorum. *Blackwell v. State*, 36 Ark. 178.]

§ 970. The directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper, by giving such notice thereof as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of sixty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder, in any proper action for that purpose, or may sell said stock at public auction, giving at least thirty days' notice of the time and place of sale by advertising in some newspaper published in the county where the business of such corporation is transacted, or in an adjoining county. And, in case of a sale, the proceeds thereof shall be first applied in payment of the installment called for, and the expenses of the sale and the residue shall be refunded to the owner thereof. In case the proceeds of such sale shall be insufficient to

pay said installments, said corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased.

[Suits by corporations for calls upon subscriptions and for assessments. *R. R. Co. v. Gaster*, 20 Ark. 455; *Same v. Chestnut*, id. 461.

Stock subscriptions. What sufficient to bind subscriber. *Woodruff v. McDonald et al.*, 33 Ark. 97.

When subscription due before all of capital stock subscribed. *Arkadelphia, etc., v. Trimble*, 54 Ark. 316; s. c., 15 S. W. Rep. 776.

Voluntary release of stock subscription by insolvent company is fraud, when. *Carter v. Printing Co.*, 54 Ark. 576; s. c., 16 S. W. Rep. 579.]

§ 971. The president and secretary of every corporation organized under the provisions of this act shall annually make a certificate showing the condition of the affairs of such corporation, as nearly as the same can be ascertained, on the first day of January or of July next preceding the time of making such certificate, in the following particulars, viz.: The amount of capital actually paid in; the cash value of its real estate; the cash value of its personal estate; the cash value of its credits; the amount of its debts; the name and number of shares of each stockholder; which certificate shall be deposited on or before the fifteenth day of February or of August with the county clerk of the county in which said corporation transacts its business, who shall record the same at length in a book to be kept by him for that purpose; and whenever any stockholder shall transfer his stock in any such corporation, a certificate of such transfer shall forthwith be deposited with the county clerk as aforesaid, who shall note the time of said deposit and record it at full length in a book to be by him kept for that purpose; and no transfer of stock shall be valid as against any creditor of such stockholder until such certificate shall have been so deposited.

Sale of shares under execution or attachment. See Act of 1891, at p. 16.

§ 972. All corporations organized and established under the provisions of this act shall be capable to sue and be sued, plead and be impleaded, answer and be answered unto, appear and prosecute to final judgment in any court or elsewhere; to have a common seal and to alter the same at pleasure; to elect, in such manner as they shall determine, all necessary officers; to fix their compensations and define their duties; to ordain and establish by-laws for the government and regulation of their affairs, and to alter and repeal the same; and to employ all such agents, mechanics and other laborers as they shall think proper.

Attachments. § 369. Corporation must give security for costs. § 1036. Executions against corporation. §§ 3903-3906. Injunction against corporation. § 3738. Pleadings and practice. §§ 4579-5209. Requirements of foreign corporation before

It can sue in this State. Act of 1887, at p. 15. Officers, how elected, etc., § 966. Personal liability of officers, §§ 980, 982, 983. Power to hold land, § 973.

[Powers of corporation defined. *Conway et al. ex parte*, 4 Ark. 302. Corporation distinct from directors or corporators who compose it. *Id.* Plea of limitation to action by corporation admits its existence and capacity to sue. *Clark v. Bank*, 10 Ark. 516. These also admitted by plea of the general issue in suit brought by a corporation. *Finley v. Council*, 10 Ark. 423. Actions against corporation to recover for services rendered to promoters. *R. R. Co. v. Perry*, 37 Ark. 164. Oral promise by new corporation to pay debts contracted by promoters, void by statute of frauds. *Id.* Corporation is bound only by its own contracts, and not by those of individual members in their private capacity. *Id.* A plea of null tiel corporation had on demurrer or on motion to strike out, in suit brought by a domestic corporation, created by public law, of which the courts take judicial notice; but if the statute creating the corporation require something to be performed as a condition precedent to its existence, the plea would be good, and the plaintiff must reply a performance. *Hammitt v. R. R. Co.*, 20 Ark. 204.

In a suit by a corporation, it can be shown in defense, that the plaintiffs have forfeited their corporate rights by misuser or nonuser. *Id.* Private corporation may be sued by one of its own members, either at law or in equity. *Booker, ex parte*, 18 Ark. 338.

In a suit by a corporation unnecessary to aver in declaration that plaintiff is an incorporation duly constituted and authorized to sue in its corporate name. If legal existence is questioned it must be done by plea. *R. R. Co. v. Gaster*, 20 Ark. 455.

An answer to an action by a corporation, that it had forfeited its charter by nonuser, without averring that a forfeiture had been declared by judicial proceedings for that purpose, is demurrable. *West et al. v. Ins. Co.*, 31 Ark. 476.

In suits against corporations, it is not necessary to allege in the complaint the incorporation further than by a statement of the corporate name. *Building Assn. v. Hogan*, 28 Ark. 261.

Corporation may be sued for libel. *Am. Cas. Co. v. Lea*, 56 Ark. 539; s. c., 20 S. W. Rep. 416.

Foreign insurance company doing business in State is suable on any cause of action arising here. *Id.*

Foreign corporation may litigate in this State. *Railway v. Fire Assn.*, 55 Ark. 163; s. c., 18 S. W. Rep. 43.

Authority of certain officers of a corporation to execute its notes cannot be presumed from fact that they have exercised it. *Ry. Co. v. Bank*, 34 S. W. Rep. 89.

Everything done by and to the persons intrusted with the management of the business at the branches of the bank of the State, in respect to that business, must be considered as done by or to the corporation. *Bower v. State Bank*, 5 Ark. 234.

Corporations must be limited by their charters as to questions which relate to the power of dealing with third persons; but in questions relating to their own organization a liberal construction is to be adopted. *Plankroad Co. v. Reeves*, 23 Ark. 302.

To bind a corporation by specialty, corporate seal must be affixed to the instrument. Private seal of agent not sufficient. *State v. Allis*, 18 Ark. 269.]

§ 973. Every such corporation shall, by its corporate name, have power to acquire and hold such lands, tenements and hereditaments and such property of every kind as shall be necessary for the purpose of said corporation; and such other lands, tenements and hereditaments as shall be taken in payment of or as security for debts due to such

corporation, and to manage and dispose of the same at pleasure.

[The assets of an incorporated company are a trust fund for the payment of its debts and may be followed into the hands of any person acquiring them with notice of the trust. *Jones et al. v. Ark. M. & A. Co.*, 38 Ark. 17.

Conveyances of corporate property by president and secretary cannot be attacked by corporate creditors for failure of directors to agree to its sale at a corporate meeting. *Estes v. Bank*, 34 S. W. Rep. 85.]

§ 974. The books of every such corporation containing their accounts shall be kept and shall at all reasonable times be open in the county where such corporation is located, or at the office of the treasurer within this State, for the inspection of any of the stockholders of said corporation; and said stockholders shall have access to the books and statements of said corporation; and shall have the right to examine the same in said county or at said office, and, as often as once in each year, a true statement of the accounts of said corporation shall be made and exhibited to the stockholders, by order of the directors.

§ 975. The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock or property of its members invested therein for all debts due from them to such corporation.

See § 961.

[Transfer of stock and franchise will not carry assets previously distributed among stockholders. *Jefferson v. Edrington*, 53 Ark. 566; s. c., 14 S. W. Rep. 99, 903.]

§ 976. Every such corporation may amend its articles of association by the specification of any other lawful business in which the stockholders may desire to engage; but before it shall commence any business under its amended articles other than such as was distinctly and definitely specified in its original articles, the president and directors shall cause such of the amended articles as specify the purpose for which such corporation is formed, subscribed by all the stockholders, to be published in a newspaper printed in the county in which such corporation is located, or in an adjoining county; and shall also make a certificate of the purpose for which such corporation is formed, as changed by the amended articles, which certificate shall be signed, deposited and recorded in the same manner as the certificate required in section 968.

See § 968.

§ 977. When any such corporation shall increase its capital stock, as provided in sec-



tion 961, the president and directors shall, within thirty days thereafter, make a certificate thereof, which shall be signed, deposited and recorded as provided in section 968.

§ 978. The county clerk, after recording the certificates specified in section 971, shall return the same, with his indorsement of record thereon, to said corporation on demand; and for recording the certificates required in this act he shall be entitled to receive at the rate of ten cents for each one hundred words.

§ 979. The certificates required by sections 968, 971, 976 and 977, except certificates of transfers of stock, shall be made under oath or affirmation by the person subscribing the same; and if any person shall knowingly swear or affirm falsely as to any material facts, he shall be deemed guilty of perjury, and be punished accordingly.

§ 980. (As amended February 14, 1891.) If the president or secretary of any such corporation shall neglect or refuse to comply with the provisions of section 971 and to perform the duties required by them respectively, the persons so neglecting or refusing shall jointly and severally be liable to an action founded on this statute, for all debts of such corporation contracted during the period of any such neglect or refusal.

Liability of directors. § 982. Of other officers.

§ 983. Criminal liability of officers. §§ 1786, 1788.

§ 981. If the capital stock of any such corporation shall be withdrawn and refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to them respectively, as aforesaid; but if any stockholder shall be compelled, by any such action, to pay the debts of any creditor, or any part thereof, he shall have the right, by bill in equity, to call upon all the stockholders to whom any part of said stock has been refunded to contribute their proportional part of the sum paid by him as aforesaid.

[Liability of stockholders under the common law. *Jones et al. v. Jarman*, 34 Ark. 323. Liability under Constitution of 1868. *Id.*]

§ 982. If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or that such dividend would render it so, the directors assenting thereto shall be jointly and severally liable, in an action

founded on this statute, for all debts due from such corporation at the time of such dividend.

[Corporation estopped to deny that dividend has been declared, when. *Ry. Co. v. Martin*, 37 Ark. 355; s. c., 21 S. W. Rep. 465.

When assets of business corporation a trust fund for creditors. *Worthen v. Griffith*, 59 Ark. 562; s. c., 28 S. W. Rep. 286.

Right of corporation to make preferences. *Id.*  
Corporation may prefer its directors. *Id.*]

§ 983. If the president, directors or secretary of any such corporation shall intentionally neglect or refuse to comply with the provisions of this act, and to perform the duties therein required of them, respectively, such of them as so neglect or refuse shall be jointly and severally liable, in an action founded on this statute, for all the debts of such corporation contracted during the period of any such neglect or refusal.

See § 980.

[That defendant signed a note for money loaned the corporation of which he was a director in the belief that he would not be individually liable is no defense. *Maledon v. Ledore*, 35 S. W. Rep. 1102.]

§ 984. If any corporation, organized and established under the authority of this act, shall violate any of its provisions, and shall thereby become insolvent, the directors ordering or assenting to such violation shall be jointly and severally liable, in an action founded on this statute, for all debts contracted after such violation as aforesaid.

§ 985. Any corporation, organized under this act, which has a lien upon the stock of any stockholder therein, as provided by section 975, may give notice to such stockholder that, unless he shall pay his indebtedness to said corporation within three months from the time of giving such notice, then such corporation will proceed to sell and transfer the stock of such stockholder in said corporation; and, upon default of payment, said corporation may sell the stock of such indebted stockholder as hereinafter provided, and any such corporation may prescribe, by its by-laws, the manner of giving the notice required by this section.

§ 986. Such corporation may, at any time within six months after it shall have given the notice required by the preceding section to such indebted stockholder of its intention to sell such stock, and the three months' notice shall have expired, advertise in one or more newspapers published in the county where such corporation is located, and if there be no newspaper published in said county, then in a newspaper published in an adjoining county, giving at least three weeks' notice of the time and place of sale, and at the time and place shall state the amount due from such stockholder to such corporation; and may then proceed to sell, for cash, at public auction, to the highest

bidder therefor, so much of the stock of such indebted stockholder as shall pay in full the indebtedness of such stockholder to such corporation, together with the necessary cost of sale; and if the sale of the entire stock of such indebted stockholder shall not be sufficient to pay in full the claim of said corporation on said stock, such corporation shall credit the amount received for such stock, less the costs of sale, to said indebted stockholder, and may proceed to collect the remainder of their debt by any proper action for that purpose.

§ 987. Whenever the purchasers of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to such purchasers, or to their order, and shall cancel upon the books of the corporation the certificates of such indebted stockholder, and the new certificates so issued shall entitle the holders thereof to all the privileges, rights and interests of a stockholder in such corporation.

§ 988. Whenever any stockholder in any such corporation shall have made a transfer or assignment of his stock, as security for his indebtedness, to a third party, and afterward shall become a debtor to such corporation, such corporation may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and shall credit the amount received from such sale to such indebted stockholder. Such corporation may require the party holding a transfer or assignment of such stock to give a statement to the treasurer of such corporation, under oath, of the amount for which said stock was pledged; and if said party shall not give such a statement at or before the time such sale is to take place, he shall forfeit all claim and lien on such stock, or any part thereof, and such corporation may sell the same as herein provided.

§ 989. Nothing contained in the four preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation.

§ 990. Any joint-stock corporation, organized under the provisions of this act, may remove its place of business from any county in this State where it is or may be located to any other county in this State. But the president and secretary of such corporation shall procure from the county clerk of the county from which it shall remove a certified copy of the records of its articles of association and all other records showing the state of its affairs, to which certified copy shall be attached the certificate of said president and secretary that such corporation has thus removed, which certified copy and certificate attached shall be left for record, immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove, and shall be recorded by such clerk at full length

in a book kept for that purpose. And the president and secretary of such corporation shall, immediately on such removal, cause a like certificate to be deposited with the secretary of State, which shall be recorded by him in a book kept for that purpose; and they shall cause a duplicate copy of such certificate to be published in a newspaper in the county in which such corporation shall be located, or in an adjoining county; and in case of removal from one county to another, said duplicate shall be published in two newspapers, one in the county from which, and the other in the county to which, such corporation shall remove.

§ 991. The general assembly may at any time, for just cause, rescind the powers of any joint-stock corporation created pursuant to the provisions of this act, and prescribe such mode as may be necessary or expedient for the settlement of its affairs.

See Const., art. II, § 17. Dissolution, § 1035.

[Where legislature possesses power to repeal charter, and exercises it, courts will not presume that such power was improperly or unconsciously exercised. *State v. Curran*, 12 Ark. 321. Power of legislature to "alter, revoke or amend" charters considered. *Leep v. Ry. Co.*, 58 Ark. 407; *s. c.*, 25 S. W. Rep. 75. It may restrict corporation's right to contract. *Id.*]

## VII. DISSOLUTION.

§ 1035. If any corporation shall expire or cease to exist, either by its own limitation, judicial judgment of forfeiture of charter, or by legislative act, the common law in relation to corporations shall not be in force in relation thereto, but the goods and chattels, lands, tenements and hereditaments, and every right or profit issuing out of or appertaining thereto, moneys, credits and effects of such corporation, shall immediately vest in the State in trust for the uses and purposes by said charter contemplated; and each, every and all right, upon the expiration or dissolution of said corporation, shall be and is in abeyance until the action of the legislature shall be had thereon, unless provision shall be made by law for the management of said corporation fund in contemplation of such dissolution.

See § 991 and Act of 1893, at p. 16.

[Power of legislature to create and control corporations. *State of al. v. Curran*, 12 Ark. 321; *s. c.*, reversed, 15 How. (U. S.) 304.

Dissolution of a corporation for misuser and nonuser can only be effected by judicial trial and judgment. If a bank makes a valid assignment of its assets and property to trustees, for benefit of its creditors, it is a good cause of a forfeiture of charter. *State v. Bank*, 5 Ark. 595.

The charter of a corporation can be avoided for nonuser or misuser only by direct proceedings against it, on behalf of the State, for that purpose. Individuals cannot allege it in collateral suits until it be judicially declared. *Blackwell v. State*, 36 Ark. 178.

By the death of all its members a corporation is dissolved, and when from death or disfranchisement too few remain under the constitution of the corporation to continue the succession, to

Costs; criminal law; execution — Stat., §§ 1036, 1725, 1735, 1786-1788; 3003.

all purposes of action at least, the corporation itself is dissolved; but as long as the survivors are sufficient in number to continue the succession, the body remains. Id.]

When so dissolved the fact may be shown collaterally. Id.]

### CHAPTER XXX.

#### Costs.

Sec. 1036. Security for costs, who to give.

§ 1036. A plaintiff who is a nonresident of this State, or a corporation other than a bank created by the laws of this State, before commencing an action shall file in the clerk's office a bond, with sufficient surety, to be approved by the clerk, for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other to which it may be carried, either to the defendant or to the officers of the courts.

### CHAPTER XLV.

#### Criminal Law.

XXVIII. Forgery, counterfeiting, etc.  
XXXII. Offenses against the revenue.

#### XXVIII. FORGERY, COUNTERFEITING, ETC.

Sec. 1725. Counterfeiting corporate seal.  
1735. Forgery by officer of corporation.

§ 1725. If any person shall fraudulently make or counterfeit any instrument, stamping or impression in the figure or likeness of the seal \* \* \* of any corporation or officer thereof, or if he have in his possession any such instrument, and conceal the same, knowing it to be falsely made and counterfeited, he shall, on conviction, be confined in the penitentiary not less than five nor more than fifteen years.

§ 1735. Every president, cashier, treasurer, secretary or other officer, and every agent of any bank, railroad, manufacturing or other corporation, who shall wilfully and designedly sign, with intent to issue, sell or pledge, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share of the capital stock of such corporation, or any certificate or other evidence of the ownership or transfer of any share in such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, promissory note, bond, bill of exchange or other evidence of indebtedness, the signing, issuing, selling or pledging of which by such president, cashier, treasurer, secretary, or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars and imprisoned in the penitentiary not less than one nor more than ten years.

#### XXXII. OFFENSES AGAINST THE REVENUE.

Sec. 1786. President or agent of bank failing to list stock.  
1788. False listing of property for taxation, perjury.

§ 1786. If the president or principal accounting officer or agent of any bank or incorporated company shall fail to comply with the provisions of the law in regard to listing or the payment of taxes on the shares or capital stock of such bank or incorporated company, at the time fixed by law for listing property or paying taxes, he shall, upon conviction thereof, be deemed guilty of a felony, and shall be fined not less than one thousand and not more than five thousand dollars, and imprisoned in the penitentiary not less than one nor more than five years; and the fine hereby imposed shall be a lien against the assets of such bank or incorporated company, and execution may issue as in other cases.

Civil liability of officers. §§ 980, 982-985.

§ 1788. Any president, secretary, receiver, accounting officer, servant, agent or person who shall knowingly make any false answer to any question or statement required by law touching the business, property, moneys and credits of such person or corporation liable to taxation shall be deemed guilty of perjury.

### CHAPTER LX.

#### Execution.

Sec. 3003. Stock in corporations, how levied on.  
3004. Same.  
3074. Of shares in corporations.

#### Executions against Corporations.

3089. First process against, on judgment to be fi. fa., and how levied.  
3090. In what case attachment thereafter to issue.  
3091. Attachment, how issued.  
3092. Effect of such service to bind debts, etc.  
3093. Proceedings and judgment against garnishee.  
3094. Garnishee paying money, to have credit against corporation.  
3095. Other writs of attachments to issue, when judgment not satisfied.  
3096. Surplus to be paid to corporations.

§ 3003. When an execution shall be issued against any shares or stock in any bank, insurance company or other corporation, it shall be the duty of the cashier, secretary or chief clerk thereof, upon the request of the officer having such execution, to furnish him with a certificate, under his hand, stating the number of rights or shares the defendant holds in such bank, company or incorporation, with the incumbrances thereon.

See Act of 1891, at p. 16.

Executions; fees; injunction — Stat., §§ 3004, 3074, 3089-3096, 3228, 3738.

§ 3004. The officer obtaining such information may make a levy of such execution on such rights or shares by leaving a true copy of such writ with the cashier, secretary or chief clerk; and, if there be none, then with some other officer of such bank, company or corporation, with the certificate of the officer making such levy that he levies upon and takes such rights or shares to satisfy such execution.

See Act of 1891, at p. 16.

§ 3074. When any rights or shares in any bank, company or corporation shall be sold, the officer making such sale shall execute an instrument in writing, to be drawn at the expense of the purchaser, reciting the sale and payment of the consideration, and conveying to the purchaser all the right, title and interest which the defendant had in and to such rights and shares, and shall also leave with the cashier, secretary, chief clerk, or, if there be none, then with any other officer of such bank, company or corporation, a copy of the execution and his return thereto; and the purchaser shall thereupon be entitled to all dividends and stock, and to the same privileges as a member of such company, as such debtor was entitled to.

#### Executions against Corporations.

§ 3089. The first process upon the judgment against any private corporation shall be a fieri facias, which the sheriff or other officer shall levy on the moneys, goods and chattels, lands and tenements, of such corporation, and proceed thereon as in other cases.

§ 3090. If the sheriff or other officer shall return upon any such writ of fieri facias that no goods and chattels, lands and tenements, can be found whereon to levy, or if the property taken shall not be sufficient to satisfy the judgment, interest and costs, the circuit court shall, on the application of the plaintiff, or his attorney, issue a writ of attachment against the rights and credits of such corporation, reciting the judgment, execution and return, and directed to the sheriff of the proper county.

[Removal by a corporation of a material part of its property out of the State, ground of attachment. *Simon v. Sevier Assn.*, 54 Ark. 58; s. c., 14 S. W. Rep. 1191.]

§ 3091. Such attachment shall be executed by summoning, as garnishee, any person having any moneys or effects belonging to such corporation, and any debtor to such corporation, who may be found within the county, to appear before the circuit court at the return of such writ, and then and there answer touching any moneys or effects of such corporation in his hands, or any debt he may owe to the same.

§ 3092. From the time of making such service, all moneys and effects due and owing,

payable or belonging to such corporation, shall be bound until the judgment is satisfied; and no payment made thereafter to such corporation, or other disposition of other debts, moneys or effects so attached, shall be credited to the garnishee making the same, nor shall the stock owned by such person in such corporation be allowed as a set-off.

§ 3093. Proceedings against garnishees, under the provisions of this act shall be the same as against the garnishees summoned in the case of absent and absconding debtors; but no judgment shall be rendered against him for any debt to become due at a future day, until after the same shall become due.

§ 3094. For all moneys paid by any garnishee, under the provisions of this act, he shall have credit against the corporation to whom it is due.

§ 3095. If a sufficient sum be not made to satisfy such judgment and costs, other writs of attachment may be issued as aforesaid, from time to time, until the whole is satisfied.

§ 3096. If any money remain in the hands of the officer, after satisfying the judgment and all costs, he shall pay the same to the corporation, or its order.

#### CHAPTER LXIII.

##### Fees.

Sec. 3228. Of secretary of State.

§ 3228. The following fees shall be allowed for services performed by the secretary of State, and paid into the treasury in the same manner that all other fees are or shall be directed to be paid, viz.:

\* \* \* \* \*

For receiving each draft of articles or charter of a private incorporation, created for religious, literary, benevolent or scientific purposes, and not for purposes of pecuniary profit, directly or indirectly, \$2.50.

For filing each charter or draft of articles of a private corporation, created for any other purpose than that denoted in the preceding paragraph, excepting also railway and telegraph companies, \$25.

For each amendment or supplement thereto (and the expense of recording the same), \$10.

All the above specified fees shall be paid at the time the commission, certificate, instrument, or copy, is delivered, or the charter or draft of articles of incorporation is filed or recorded.

#### CHAPTER LXXXI.

##### Injunction.

Sec. 3738. Injunction to stop business of a corporation, notice required.

§ 3738. An injunction to stop the general and ordinary business of a corporation, or the operation of a turnpike, railroad or

canal company, or of a municipal corporation, or of the trustees of a town, or any building, erection or other work, or to restrain a nuisance, or the unlawful issue or circulation of small notes or bills, can only be granted upon reasonable notice of the time and place of the application therefor to the party enjoined.

## CHAPTER CXIX.

### Pleadings and Practice.

- Sec. 4979. Service of summons on corporations.  
 4982. On foreign corporations.  
 4989. Writting order, when to be made.  
 5002. Actions against corporations, where brought.  
 5005. Against foreign corporations.  
 5012. Action in name of State to vacate or repeal charters.  
 5013. Service of process in such case.  
 5056. Pleadings, how verified by corporation.  
 5209. Service of notice on corporations.

### Receivers.

5283. Powers and duties in cases of corporations, etc.  
 5284. In cases now pending receiver may be substituted as a party.  
 5290. Who not to be receiver.

§ 4979. Where the defendant is a corporation, created by the laws of this State, the service of the summons may be upon the president, mayor or chairman of the board of trustees, and, in case of the absence of the above officers, then it may be served upon the cashier, treasurer, secretary, clerk or agent of such corporation, and, in case of railroad corporations, upon any station agent, or upon any person who has control of any of the business of said corporation, either as clerk, agent or otherwise, who, as such agent or clerk, has to report to the corporation who employed them; and, in cases of railroad corporations, a service of a copy of the summons upon the clerk or agent of any station in the county where the same shall be issued shall be deemed and considered as a good and valid service.

Service of summons on foreign corporation.  
 § 4982. Service of notice on corporation. § 5209. Foreign corporation must have an agent for process. See Act of 1887, at p. 15. See § 972, note.

[Provisions of a charter, regulating manner of serving process on the corporation, relates alone to the remedy, and is repealed by a subsequent general enactment prescribing manner of service in such cases. *R. R. Co. v. Hecht*, 29 Ark. 661. Service of process upon a corporation, return must show what. *R. R. Co. v. Trout*, 32 Ark. 17.]

§ 4982. Where the defendant is a foreign corporation, having an agent in this State, the service may be upon such agent.

Suits by and against foreign corporation. Const., art. XII, § 11; Statutes, § 972; Act of 1887, at p. 15.

[As to service of process on foreign corporation, see *B. & L. Assn. v. Hallum*, 59 Ark. 583; s. c.,

28 S. W. Rep. 429; *Union, etc., Co. v. Craddock*, 59 Ark. 593; s. c., 28 S. W. Rep. 424.]

### Constructive Service.

§ 4989. Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action, that the defendant is:

First. A foreign corporation, having no agent in this State; or, \* \* \*

§ 5002. An action, other than those mentioned in sections 4994, 4995, 5000,\* against a corporation created by the laws of this State may be brought in the county in which it is situated or has its principal office or place of business, or in which its chief officer resides but, if such corporation is a bank, or insurance company, the action may be brought in the county in which there is a branch of the bank or agency of the company, where it arises out of a transaction of such branch or agency.

§ 5005. An action, other than one of those mentioned in sections 4994, 4995, 5000,\* against a nonresident of this State, or a foreign corporation, may be brought in any county in which there may be property of or debts owing to the defendant.

See § 309. Actions in which attachments may be sued out may be prosecuted in any county in which property may be attached. Statutes, § 316.

§ 5012. Any action required by law to be brought in the name of the State against any corporation, or to vacate or repeal any charter, may be brought in any county in the State before any court having jurisdiction of such action.

Quo warranto, proceedings in. §§ 6464 et seq.

[Proceedings in quo warranto is the proper remedy to compel forfeiture of franchise. *State v. Bank*, 5 Ark. 595. Writ of quo warranto against a mere officer or servant not sufficient. *Smith v. State*, 21 Ark. 294.]

§ 5013. Service of process in any such action may be made in any county in the State upon any defendant to such action in like manner as is now or may hereafter be provided by law in other cases, and any such defendant shall be required to appear and defend such action in the county where the same may be commenced.

§ 5056. The verification of any pleading of a corporation may be by any officer or agent on whom the summons in an action against the corporation may be served, or by its attorney in the action.

Verification by corporation of demands against estates. §§ 104, 105.

\*Actions regarding real property and to recover penalties and forfeitures.

Receivers; railroads; taxation — Stat., §§ 5209, 5283-5284, 5290, 5585-5586.

§ 5209. A notice to a corporation may be served in the same manner as a summons in an action against it.

See § 4979.

### Receivers.

§ 5283. Whenever, in any case, a receiver shall be appointed for a corporation or the trustees thereof, or any copartnership or joint-stock company, and the order or decree of the court, judge or chancellor shall be that the lands, tenements, goods, chattels, funds, assets, moneys, credits, choses in action, rights and interests of every kind, name and nature, either in law or equity, or any part thereof, belonging to the same, shall be placed in the hands of such receiver, he shall from thenceforward, until further order or decree of the court, judge or chancellor, have full possession, custody and control thereof, and shall be vested with the title, so far as it shall be necessary to collect debts, preserve the assets and property for the benefit of creditors and all persons interested, and may and shall bring and prosecute and defend all suits in his own name that may be necessary for that purpose.

§ 5284. In all suits that may be pending in any court, prosecuted by or brought against such corporation, or trustees, or copartnership, or joint-stock company, or in which either may be interested, such receiver may be substituted as a party, on his own application, without process or revivor, and prosecute or defend the same with like effect as the original parties might or could do, and suits may progress against him by substitution in the same manner.

§ 5290. No party or attorney, or person interested in an action, shall be appointed receiver therein.

## CHAPTER CXXV.

### Railroads.

See, 5510. Corporations may fix par value of shares, how.

§ 5510. It shall be lawful for any railroad or other incorporated company, organized under the laws of this State, to fix the par value of the shares of its capital stock at one hundred dollars per share. Provided, That stock now in existence of less amount than one hundred dollars shall continue to have pro rata representation. And, provided, further, That the number of shares of stock required to be owned by directors, as one of the qualifications for that office, shall be reduced in the same proportion as the par value of the shares is increased. And, provided, further, That this act shall not be so construed as to authorize the increase of the amount of capital stock of any company.

## CHAPTER CXXIX.

### Revenue.

See, 5585. Words and phrases defined.

5586. All property taxable.

5613. Property listed by whom.

5645. Corporations; when and what to list.

5646. Notice by assessor to corporation to file statement; penalty for failure or refusal.

§ 5585. \* \* \* The term "investment in bonds," wherever used in this act, shall be held to mean and include all \* \* \* certificates of indebtedness commonly called scrip, whether issued by incorporated or unincorporated companies, \* \* \* or other corporations, held by persons residing in this State, either by themselves or by others for them, whether for themselves or as guardians, trustees or agents.

The term "investment in stocks," wherever used in this act, shall be held to mean and include all moneys invested \* \* \* in any association, corporation, joint-stock company or otherwise, the stock or capital of which is or may be divided into shares, which are transferable by each owner without the consent of the other partners or stockholders, for the taxation of which no special provision is made by this act, held by persons residing in this State, either for themselves or as guardians, trustees or agents, or by others for them.

\* \* \* \* \*  
The term "personal property," wherever used in this act, shall be held to mean and include:

Second. The capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits or means, by whatsoever name the same may be designated, inclusive of every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat of whatsoever name and description, used, or designed to be used, exclusively or partially, in navigating any of the waters within or bordering on this State, whether such ship, vessel or boat shall be within the jurisdiction of this State or elsewhere, and whether the same shall have been enrolled, registered or licensed at any collectors office, or within any collector's district of this State or not.

\* \* \* \* \*

### Property and Privileges Subject to Taxation.

§ 5586. All property, whether real or personal, in this State; all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of persons residing therein; the property of corporations now existing or hereafter created, and property of all banks or banking companies now existing or hereafter created, and of all bankers and brokers, shall be subject to

taxation; and such property, moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise, or the value thereof, shall be entered on the list of taxable property for that purpose.

§ 5613. The property of \* \* \* corporations whose assets are in the hands of receivers, (shall be listed) by the receiver; of every company, firm, body politic or corporate, by the president or principal accounting officer, partner or agent thereof.

§ 5645. Gas, telephone, bridge, street railroad, savings banks, mutual loan, building, transportation, construction, and all other companies, corporations or associations, incorporated under the laws of this State, or under the laws of any other State, and doing business in this State, other than insurance companies (see § 3832), and the companies and corporations whose taxation is in this act specifically provided for, in addition to the other property required by this act to be listed, shall, through their president, secretary, principal accounting officer or agent, annually, during the month of March, make out and deliver to the assessor of the county where said company or corporation is located or doing business a sworn statement of the capital stock, setting forth particularly:

First. The name and the location of the company or association.

Second. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third. The amount of capital stock paid up, its market value, and, if no market value, then the actual value of the shares of stock.

Fourth. The total amount of all indebtedness, except indebtedness for current expenses, excluding from such indebtedness the amount paid for the purchase or improvement of the property.

Fifth. True valuation of all the tangible property belonging to such company or corporation; such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts.

See Const., art. XVI, § 7.

[Mode of assessing corporations for taxes other than railway. *Ry. v. Williams*, 53 Ark. 63; s. c., 13 S. W. Rep. 796.]

§ 5646. The assessor shall, annually, at least ten days before the twenty-eighth day of February, deliver to the president, secretary, accounting officer or agent of any such company, corporation or association located in or doing business in such county a notice in writing to return such schedule by the thirty-first day of March next ensuing. Any president, secretary, principal accounting officer or agent of any such companies or corporations, upon whom such notice shall have been served, willfully neglecting or refusing to make such return by the thirty-

first day of March next ensuing, after delivery of said notice, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one hundred dollars, or imprisoned not exceeding three months, or both, and the assessor shall, from the best information he can obtain, make out and enter upon the proper assessment-roll a list, with the valuation, of all tangible and intangible property belonging to such defaulting company or corporation subject to taxation by the provisions of this act, with fifty per cent. penalty.

## CHAPTER CXXXIX.

### Statutes.

- See, 6339. Corporation, company or person includes what.  
6344. Certain words defined.  
6354. Definition of foreign corporation.  
6364. Rule in amending Code.

§ 6339. The words "corporation, company or person," when they occur together in any statute defining and punishing crimes, shall be construed to include \* \* \* public and private bodies, politic and corporate, \* \* \*

### Rules of Construction of the Code.

§ 6344. \* \* \* The word person includes a corporation as well as a natural person \* \* \*

§ 6354. A "foreign corporation" is one created by the laws of some other State or country.

See Const., art. XII, § 11.

§ 6364. No act shall have the effect to amend or repeal, or be construed as amending or repealing, any title, chapter, article, section, clause or provision of the Code unless such intention be expressly stated, and the title, chapter, article or section shall be particularly referred to and recited in the act amending or repealing the same.

## CHAPTER CLI.

### Usurpation of Office, etc.

- See, 6464. In what case action at law may be brought in lieu of quo warranto.  
6465. How brought to vacate charter.  
6466. In case of usurpation of office, how brought.  
6467. Prosecuting attorney to institute action, when.  
6468. Attorney-general, when.  
6470. Judgment.  
6472. Pleadings, when to be verified.

§ 6464. In lieu of the writs of scire facias and quo warranto, or of an information in the nature of a quo warranto, actions by proceedings at law may be brought to vacate or repeal charters, and prevent the usurpation of an office or franchise.

See § 5012.

§ 6465. The action to repeal or vacate a charter shall be in the name of the State, and brought and prosecuted by the attorney-general, or, under his sanction and direction, by an attorney of the State.

§ 6466. Whenever a person usurps an office or franchise to which he is not entitled by law, an action by proceedings at law may be instituted against him, either by the State or the party entitled to the office or franchise, to prevent the usurper from exercising the office or franchise.

§ 6467. It shall be the duty of the several prosecuting attorneys to institute the actions mentioned in this chapter against all persons who have or shall usurp county offices or franchises, where there is no other person entitled thereto, or the person entitled fails to institute the same for three months after the usurpation.

§ 6468. For the usurpation of other than county offices or franchises, the action by

the State shall be instituted and prosecuted by the attorney-general.

§ 6470. Where a person is adjudged to have usurped an office or franchise, he shall be deprived thereof by the judgment of the court, and the person adjudged entitled thereto reinstated therein; but no one shall be adjudged entitled thereto unless the action is instituted by him. And the court shall have power to enforce its judgment by causing the books and papers, and all other things pertaining to the office or franchise, to be surrendered by the usurper, and by preventing him from further exercising or using the same, and may enforce its orders by fine and imprisonment until obeyed.

§ 6472. The pleadings in the actions named in this chapter are not required to be verified by affidavit, unless prosecuted by a private individual.

## LEGISLATIVE ACTS RELATING TO CORPORATIONS, ENACTED SUBSEQUENTLY TO 1884.

1. To prescribe condition upon which foreign corporations may do business in this State.
2. To regulate the levy and seizure of sale of shares of stock in corporations under writs of execution or attachment.
3. To provide for dissolution of corporations.
4. To prevent preference among creditors of insolvent corporations.
5. To authorize corporations to reduce their capital stock.
6. To prevent combinations of trusts and corporations.

### Act 1.

AN ACT to prescribe the condition upon which foreign corporations may do business in this State.

- Sec. 1. Foreign corporation to file certificate with secretary of State, naming agent upon whom summons may be served.
2. Contracts void upon failure to comply.
  3. Corporations heretofore engaged in business to have ninety days to file certificate.
  4. Acts in force from passage.

Be it enacted by the general assembly of the State of Arkansas:

Section 1. Before any foreign corporation shall begin to carry on business in this State it shall, by its certificate under the hand of the president and seal of such company, filed in the office of the secretary of State, designate an agent, who shall be a citizen of this State, upon whom service, summons and other process may be made. Such certificate shall also state the principal place of business of such corporations in this State. Service upon such agent shall be sufficient to give jurisdiction over such corporation to any of the courts of this State.

§ 2. If any such foreign corporation shall fail to comply with the provisions of the foregoing section, all its contracts with citi-

zens of this State shall be void as to the corporation, and no court of this State shall enforce the same in favor of the corporation.

§ 3. Any foreign corporation that has heretofore engaged in business, or made contracts in this State, may within ninety days from the passage of this act, file such certificate with the secretary of State, and thereon all their contracts made before this act goes into effect, are hereby declared valid as if said certificate had been filed before they began business in this State.

§ 7. This act shall take effect and be in force from and after its passage.

(Approved April 4, 1887.)

See Const., art. XII, § 11, and note; Statutes, §§ 4982, 4968, 6354.

[Above act does not affect prior contracts of foreign corporations. *Railway v. Fire Assn.*, 55 Ark. 167; s. c., 18 S. W. Rep. 43. Does it apply to foreign insurance companies? 1d.]

A trust deed made in Louisiana, providing that it should be construed by the laws of Arkansas, was not a doing of business in Arkansas within the statute imposing conditions on foreign corporations. *B. & A. Mortg. Co. v. Winchell*, 34 S. W. Rep. 801.

That a foreign corporation has not complied with the statutory requirements does not render a contract of the corporation with a nonresident void. *Boydington v. Van Etten*, 35 S. W. Rep. 622.]

### Act 2.

AN ACT to regulate the levy and seizure and sale of shares or stock in corporations under writs of execution or attachment.

- Sec. 1. Provides how levy or attachment shall be served.
2. Shares to be sold as other personal property and officer to execute certificate of purchase.



## Levy and sale of stock; dissolution — Acts of 1891, 1893.

Sec. 3. Officers of corporation to transfer stock purchased.  
 4. Conflicting laws repealed.

Be it enacted by the general assembly of the State of Arkansas:

Section 1. Whenever an officer, having an execution or writ of attachment in his hands, shall levy on shares or stock in corporations, he shall make such levy or seizure by leaving a true copy of such writ with the president, secretary or cashier, or other officer, with the certificate of the officer making such levy, that he levies upon and takes such rights or shares to satisfy such execution.

§ 2. That shares or stock thus levied upon or seized, shall be sold by the officer in the same manner, as other personal property is sold under the writ by virtue of which the levy is made, and the officer, making the sale, shall execute and deliver to the purchaser thereof a certificate, which said certificate may be in the following form: I (name of the officer and his office) hereby certify, that I have this      day of      sold to (name of purchaser)      shares of the capital stock of the (name of the corporation) in conformity with the laws of the State, which said shares were by me seized on the      day of      , under and by virtue of a certain writ of (describe the writ) issued and delivered to me out of the court, on the      day of      in favor of (name of plaintiff) against (name of defendant), for the sum and price of \$      , which was the highest and best bid therefor.

Witness my hand this      day of      .  
 § 3. That upon presentation of such certificate to the president, secretary or cashier or other principal officer of said corporation, who has charge of the stock-books of the corporation, it shall be the duty of such officer, to issue to the holder of said certificate, a certificate of stock for the number of shares thus levied on and sold, and transfer it on the stock-books of the corporation, in the same manner as if transferred by the owner in person, and he shall also issue to such holder of the certificate of purchase, a certificate, of transfer, under the seal of the corporation, which may be recorded in the office of the county clerk of the county, as now provided for by section 971 of Mansfield's Digest, and when so transferred, the stock of the person whose interest has been sold by the officer under the writ of execution or attachment, shall be deemed cancelled and wholly void.

§ 4. That all laws in conflict herewith, be and the same are hereby repealed.

(Approved February 28, 1891.)

See §§ 3003 et seq.

## Act 3.

AN ACT to provide for the dissolution of corporations.

Sec. 1. Manner of dissolution of corporations.  
 2. Publication to be made.

Sec. 3. Stockholders may intervene.  
 4. Corporations may surrender charter.  
 5. Chancery courts to wind up same.  
 6. Repeal all laws in conflict and this act takes effect from passage.

Be it enacted by the general assembly of Arkansas:

Section 1. That hereafter courts having equitable jurisdiction may make decrees upon the application of the stockholders or creditors of any corporation, to dissolve and wind up such corporation and to pay its debts and distribute its assets among the holders of the shares of stock thereof, in all cases where it shall be made to appear that such corporation is insolvent and therefore unable to continue its business, and in all cases where it shall be made to appear that the corporation has ceased to transact business.

§ 2. In addition to the service of summons in such cases, as required in other suits, the plaintiff therein shall cause notice to be given by at least two insertions in some newspaper published in the county in which such corporation had its chief place of business, at least thirty days before any decree is taken therein.

§ 3. All stockholders shall have the right to intervene in such suits and in favor or in opposition to the proposed dissolution.

§ 4. Any corporation may surrender its charter by resolution adopted by the majority in value of the holders of the stock thereof and a certified copy of such resolution filed in the office of the secretary of State, and a copy thereof filed in the office of the county clerk of the county in which such corporation is organized, shall have effect to extinguish such corporation.

§ 5. When any corporation has surrendered its charter the chancery court shall have jurisdiction to pay its debts and to distribute its assets among the stockholders according to their several interests.

§ 6. All laws in conflict with this act are hereby repealed, and this act shall take effect and be in force from and after its passage.

(Approved April 12, 1893.)

See Statutes, § 1035.

## Act 4.

AN ACT to prevent preference among the creditors of insolvent corporations.

Sec. 1. No preference to be allowed creditors of insolvent corporations, except for wages and salaries.  
 2. Creditors or stockholders may institute proceedings to wind up corporations.  
 3. Preferences to be set aside by the chancery court.  
 4. Chancery court to give notice.

Be it enacted by the general assembly of the State of Arkansas:

Section 1. That no preferences shall be allowed among the creditors of insolvent

corporations except for wages and salaries of laborers and employes.

§ 2. Any creditor or stockholder of any insolvent corporation may institute proceedings in the chancery court for the winding up of the affairs of such corporations and upon such application the court shall take charge of all the assets of such corporation and distribute them equally among the creditors after paying the wages and salaries due laborers and employes.

§ 3. Every preference obtained or sought to be obtained by any creditor of such corporation whether by attachments, confession of judgment or otherwise, and every preference sought to be given by such corporation to any of its creditors, in contemplation of insolvency shall be set aside by the chancery court, and such creditor shall be required to relinquish his preference and accept his pro rata share in the distribution of the assets of such corporation; Provided, That no such preference shall be set aside unless complaint thereof be made within ninety (90) days after the same is given or sought to be obtained.

§ 4. When any chancery court shall obtain jurisdiction of any such insolvent corporation under the provisions of this act, it shall direct notice to be given to all the creditors of such corporations to present their claims within ninety (90) days thereafter for the purpose of sharing in the assets of such corporation.

(Approved April 14, 1893.)

[This act does not apply to an attachment levied before it took effect. *Davis v. Clalin Co.*, 38 S. W. Rep. 662, 1117.]

### Act 5.

AN ACT to authorize corporations to reduce their capital stock.

Sec. 1. Authorizes reduction of capital stock. How made. *Proviso.*

2. Act takes effect and in force from its passage.

Be it enacted by the general assembly of the State of Arkansas:

Section 1. That any corporation organized under the laws of this State may reduce its capital stock, either by releasing unpaid subscriptions for stock, or by refunding to shareholders a portion of the amount paid in by them. Such reduction shall be made by a resolution adopted at the regular meeting of the stockholders, or by a special meeting called for that purpose, and a copy of said resolution shall be filed as an amendment to the charter, in the offices of the secretary of State and of the county clerk in the county in which such corporation transacts business, and such copy shall also be published in some newspaper having a

circulation in the county. Provided, That no such reduction shall affect or in any way impair the rights of any person who is a creditor of such corporation at the time the reduction is made.

§ 2. This act shall take effect and be in force from and after its passage.

(Approved February 12, 1895.)

See § 961, *supra*.

### Act 6.

AN ACT to prevent combinations of trusts and corporations in the State of Arkansas

- Sec. 1. Prohibits the formation of combinations, trusts, etc.  
 2. Corporations violating provisions of this act forfeit charters.  
 3. Punishment fixed for violation of this act.  
 4. Live stock and agricultural products not subject to this act.  
 5. Persons damaged by trusts to sue same.  
 6. Circuit judges to instruct juries as to the provisions of this act.  
 7. Repeals all laws in conflict herewith.

Be it enacted by the general assembly of the State of Arkansas:

Section 1. That from and after the passage of this act, all arrangements, contracts, agreements, trusts, or combinations, between persons or corporations, made with a view to lessen or which tend to lessen full and free competition in the importation or the sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth, or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations, between persons or corporations designed, or which tend to advance, reduce or control the price, or the cost to the producer, or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. Be it further enacted, That any corporation chartered under the laws of this State, which shall violate the provisions of this act, shall thereby forfeit its charter and franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate the provisions of this act, is hereby denied the right to do so, and is prohibited from doing business in this State. It is hereby made the duty of the attorney-general of this State to enforce this provision by due process of law.

§ 3. Be it further enacted, That any violation of this act shall be deemed, and is hereby declared, destructive of full and free competition, and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall as principal, manager, director, or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or

## Trusts — Acts of 1897.

orders, made in furtherance of any such conspiracy, shall on conviction, be punished by any fine of not less than five hundred dollars, nor more than two thousand dollars, and by imprisonment in the penitentiary not less than one, nor more than ten years, or in the judgment of the court, by either such fine or imprisonment.

§ 4. Be it further enacted, That the provisions of this act shall not apply to agricultural products, or live stock, while in the possession of the producer or raiser.

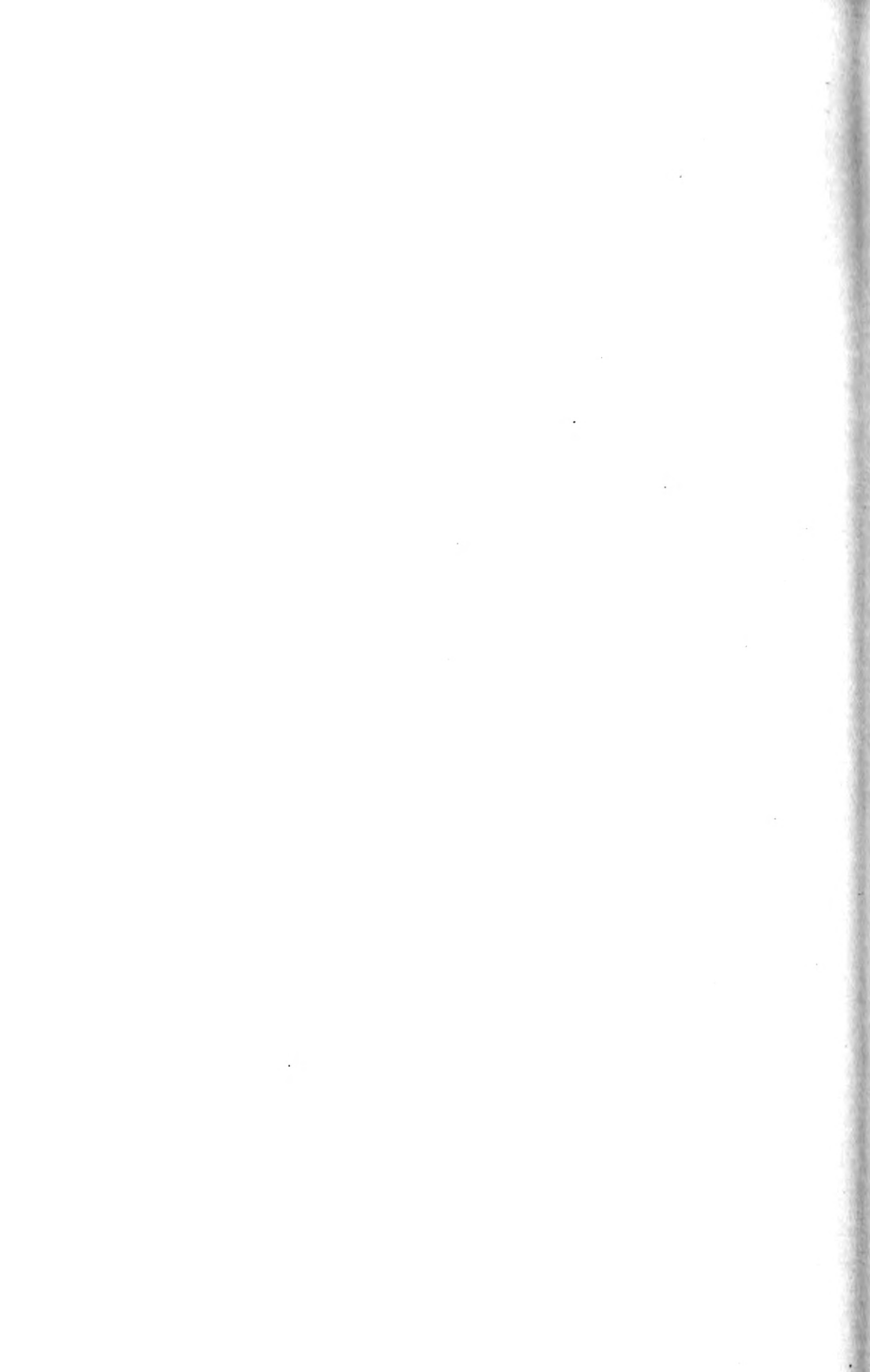
§ 5. Be it further enacted, That any person or persons, or corporation, that may be injured or damaged by any such arrangements, contracts, agreements, trusts, or combinations, described in section one of this act may

sue for and recover in any court of competent jurisdiction in this State, of any person or persons, or corporations, operating such trusts, or combinations, the full consideration or sum paid him or them for any goods, wares, merchandise or articles of sale of which is controlled by such combination or trust.

§ 6. Be it further enacted, That it shall be the duty of the judges of the circuit courts of this State to specially instruct the juries as to the provisions of this act.

§ 7. Be it further enacted, That all laws and parts of laws in conflict with the provisions of this act be, and the same are hereby, repealed.

(Approved March 16, 1897.)



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# CALIFORNIA.

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# CALIFORNIA.

## CONSTITUTION OF CALIFORNIA.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Declaration of Rights.

- Sec. 14. Private property not to be taken without just compensation.  
16. Obligation of contracts not to be impaired.  
21. Special privileges not to be granted which may not be altered, revoked or repealed.

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31. Credit of the State, or any political subdivision thereof, not to be given in aid of any corporation.  
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8. Right of eminent domain.  
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##### Land Exemption.

- Sec. 2. The holding of large tracts of uncultivated lands should be discouraged.

#### ARTICLE XIX.

##### Chinese.

- Sec. 2. Employment of Chinese.

#### ARTICLE I.

##### Declaration of Rights.

§ 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for, the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law.

Right of eminent domain not to be abridged. Art. XII, § 8. "Property" defined. Art. XIII, § 1. Holdings of uncultivated lands to be discouraged. Art. XVII, § 2.

[Private property cannot be taken for public use until paid for. *Water-Works v. Sharpstein*, 50 Cal. 284. Which rule is thoroughly imbedded in the Constitution. *Lamb v. Schottler*, 54 Cal. 324. Special road law of 1874 repealed by this section. *Weber v. Supervisors*, 59 Cal. 265. Owner of the property is entitled to jury trial to ascertain damages. *Id.* This section somewhat different from corresponding section of Constitution of 1849. *Reardon v. San Francisco*, 66 Cal. 501; s. e., 6 Pac. Rep. 317. No right of way over a street is allowed for the use of other than municipal corporation, save upon compensation ascertained

Legislative department, Const., Art. i, §§ 16, 21; Art. iv, §§ 25, 26, 31.

by the jury. *Cheney v. O'Brien*, 69 Cal. 196; s. c., 10 Pac. Rep. 479. One private person cannot take property from another, either for the use of the taker or for an alleged public use, without any compensation paid or tendered. *Lux v. Haggin*, 69 Cal. 265; s. c., 10 Pac. Rep. 674. In every case, provisions of statute as to mode of conducting condemnation proceedings must be strictly pursued. *Lux v. Haggin*, 69 Cal. 391; s. c., 10 Pac. Rep. 674. Remote consequential damages occasioned to private property as an indirect result of public works do not constitute a taking of such property, within meaning of the Constitution. *Green v. State*, 73 Cal. 29; s. c., 11 Pac. Rep. 602; 14 Id. 619. Compensation to be awarded to one must be ascertained irrespective of any benefit that would accrue to remainder of his land. *Ry. Co. v. Porter*, 74 Cal. 261; s. c., 15 Pac. Rep. 774. Rules for determining value of condemned property. *L. & T. Co. v. Neale*, 78 Cal. 63; s. c., 20 Pac. Rep. 572. Right of eminent domain is inherent in State and not conferred by the Constitution, and may be delegated by legislature to any corporation or individual who shall comply with terms upon which the right is given. *Moran v. Ross*, 79 Cal. 159; s. c., 21 Pac. Rep. 547. So far as the section requires payment of compensation for "usurpation of any benefit from any improvement proposed by such corporation," it is carefully limited to "corporations other than municipal." *Moran v. Ross*, 79 Cal. 551; s. c., 21 Pac. Rep. 958; *R. R. Co. v. Mayne*, 83 Cal. 569; s. c., 23 Pac. Rep. 522. In an action to condemn right of way for a railroad corporation, incompetent to show that oranges would bring better prices by reason of railroad being there, and that value of corporation is dependent upon the market, and its accessibility thereto. *Ry. Co. v. Haven*, 94 Cal. 489; s. c., 29 Pac. Rep. 875. Section cited. *Moulton v. Parks*, 61 Cal. 178; s. c., 30 Pac. Rep. 613. And held not to apply. *Ry. Co. v. Wade*, 91 Cal. 456; s. c., 27 Pac. Rep. 768.

Manufacturing corporation having incidental power to maintain railroads and trainways for its business, cannot exercise right of eminent domain. *Ped. v. Manf. Co.*, 107 Cal. 256; s. c., 40 Pac. Rep. 391.]

§ 16. No \* \* \* law impairing the obligation of contracts, shall ever be passed.

See next section. Charters may be repealed. C. C., § 384; Const., art. XII, § 1.

§ 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

See preceding section. Power of taxation not to be surrendered. Art. XIII, § 6.

#### ARTICLE IV.

##### Legislative Department.

§ 25. The legislature shall not pass local or special laws in any of the following enumerated cases:

Sixteenth. Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Nineteenth. Granting to any corporation, association, or individual any special or exclusive right, privilege or immunity.

Twenty-fifth. Chartering or licensing ferries, bridges, or roads.

Credit of State or of municipalities not to be given. Art. IV, § 31. How corporations are formed. Art. XII, § 1. Loan of State credit. Art. XII, § 13.

§ 26. \* \* \* The legislature shall pass laws to regulate and prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin, or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction.

[A contract between brokers, whereby one agrees to purchase and sell stock for account of the other, to advance money for the purpose, and pay assessment on stock purchased, is not obnoxious to above section. *Kutz v. Fleisher*, 67 Cal. 33; s. c., 7 Pac. Rep. 195. Agreement between a stock broker and his customer, by which broker agreed to purchase stocks, charging customer with commissions and interest on money advanced, and holding stocks as security until their sale, customer merely receiving or paying difference between buying and selling of value of stocks, is a contract for sale of stock on margin, within the inhibition of above section, and is void. *Cashman v. Root*, 89 Cal. 373; s. c., 26 Pac. Rep. 883.

Whether a transaction between a broker and his customer for purchase of stocks of which an immediate delivery is not contemplated, is in contravention of this section is a question of fact to be determined in each particular case. *Kullman v. Simmens*, 104 Cal. 595; s. c., 38 Pac. Rep. 362.

One who sues to recover money voluntarily paid for purchase of stocks on margin to be delivered at a future date, in contravention of above section, is not entitled to recover interest thereon. *Baldwin v. Zadig*, 104 Cal. 594; s. c., 38 Pac. Rep. 363, 722.]

§ 31. The legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal, or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual, municipal, or other corporation whatever; \* \* \* It shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

See art. IV, § 25; art. XII, § 13.

[This provision applies to formation or creation of corporations, and to powers directly conferred upon them by legislative enactment, and cannot be construed as prohibiting assignment of a fran-

chise to a legally organized corporation by persons having legal right to exercise and transfer the same. *Peo. v. Stanford*, 77 Cal. 371; s. c., 18 Pac. Rep. 85; 19 id. 693. To constitute a gift by legislature within the inhibition of this section, there must be a gratuitous transfer of State property, made voluntarily and without consideration. *Yosemite, etc., Co. v. Dunn*, 83 Cal. 261; s. c., 23 Pac. Rep. 369.

Section construed. *San Luis Water Co. v. Estrads*, 117 Cal. 168; s. c., 48 Pac. Rep. 1075.]

§ 33. The legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for storage and wharfage, in which there is a public use; and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.

## ARTICLE XII.

### Corporations.

Section 1. Corporations may be formed under general laws, but shall not be created by special act. All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

See art. IV, § 25; art. I, § 21. Charters may be repealed. C. C., § 384. General laws for formation of corporations. C. C., §§ 285, 289-296.

[A charter cannot be amended by a special law, but legislature has power to control charters of all corporations by general laws. *Thomason v. Ashworth*, 73 Cal. 77; s. c., 14 Pac. Rep. 615. This section forbids any attempt by legislature to confer a benefit or impose a duty upon one or more corporations formed under general law, not conferred or imposed upon all corporations formed under the same law. *Peo. v. R. R. Co.*, 83 Cal. 394; s. c., 23 Pac. Rep. 303. It has never been construed as requiring that all private corporations must be formed under same general law, or limited to the exercise of the same powers. In re *Madeira Irrigation District*, 92 Cal. 316; s. c., 28 Pac. Rep. 272, 675. Section construed. *Water-Works v. San Francisco*, 61 Cal. 38.]

§ 2. Dues from corporations shall be secured by such individual liability of the corporations and other means as may be prescribed by law.

[Section held not to apply to case at bar. *Harmon v. Page*, 62 Cal. 448.]

§ 3. Each stockholder of a corporation or joint-stock association shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or

association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association during the term of office of such director or trustee.

See C. C., §§ 322, 327.

[The obligations of stockholders to pay their respective proportions of debts of corporation is direct and primary. *Paymonville v. McCollough*, 59 Cal. 285. Remedy given by this section is additional to and does not supersede other remedies existing when Constitution was adopted. *Hiller v. Collins*, 63 Cal. 236. "The complaint to enforce liability must state proportion of stock owned by defendant, at time debt sued for was incurred, bears to whole subscribed stock at that time, or facts from which such proportion may be deducted. *Bidwell v. Babcock*, 87 Cal. 29; s. c., 25 Pac. Rep. 752.

The legal effect of the condition prescribed by this section is that a corporation when created becomes the agent of its stockholders to make such contracts and incur such liabilities as are authorized by law and its articles of incorporation, and the contract it thus makes binds the stockholders to the extent named. *Kennedy v. Bank*, 97 Cal. 93; s. c., 31 Pac. Rep. 846.

This section held not to apply where president of a mining company, without knowledge of directors, agrees to pay excessive price for reducing ores. *Fox v. Mining Co.*, 41 Pac. Rep. 308.]

§ 4. The term "corporations," as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.

Corporation defined. C. C., §§ 283, 284. Included in term "person." C. C. P., § 17; Pen. C., § 7. A corporation is known in law only by its name. C. C., § 354 (1) n. Power to sue and be sued. C. C., § 354 (2). To be sued where. Art. IV, § 16.

[With this right of the corporation to maintain and defend actions concerning its rights or liabilities the stockholder cannot interfere, except when directors refuse to act, or are guilty of fraud in the maintenance or defense of the actions. *Baines v. Babcock*, 95 Cal. 592; s. c., 27 Pac. Rep. 674; 30 id. 776.]

§ 5. The legislature shall have no power to pass any act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. No corporation, association, or individual shall issue or put in circulation, as money, anything but the lawful money of the United States.

Corporations not to issue money. C. C., § 356. Banking corporation must keep certain records. C. C., § 321.

§ 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization

shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

See C. C., § 287.

§ 7. The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter, of any corporation now existing, or which shall hereafter exist under the laws of this State.

See C. C., § 401.

[Section applied. *Pro. v. Ry. Co.*, 91 Cal. 338; s. c., 27 Pac. Rep. 673.]

§ 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the State.

Eminent domain. Art. 1, § 14.

§ 9. No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

Powers of corporations. C. C., § 354. How much real estate may be acquired. C. C., § 360.

§ 10. The legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

Franchise may be sold under execution. C. C., § 388.

[Section construed. *Lee v. So. Pac. R. Co.*, 116 Cal. 97; s. c., 17 Pac. Rep. 932.]

§ 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock,

at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law.

See C. C., § 359.

[First clause of this section is prohibitory. The last clause is not self-executing. *Ewing v. Mining Co.*, 56 Cal. 649. Section 359 of the Civil Code conflicts with section and is annulled. 1d. The increase of capital stock, and the issuing the additional shares, to be sold at a price less than par value of stock, to supply a fund actually required for use of corporation, is not "fictitious increase of capital," within meaning of this section. *Stein v. Howard*, 65 Cal. 616; s. c., 4 Pac. Rep. 662. Non-negotiable notes secured by mortgages executed by a corporation do not constitute "bonded indebtedness" within meaning of this section. *Underhill v. Santa Barbara, etc. Co.*, 93 Cal. 300; s. c., 28 Pac. Rep. 1049. Section construed. *Thomason v. Ashworth*, 73 Cal. 77; s. c., 14 Pac. Rep. 615.]

§ 12. In all elections for directors or managers of corporations every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, except that members of co-operative societies formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law.

See C. C., § 307.

[A corporation has no power to adopt any other mode of election. *Wright v. Water Co.*, 67 Cal. 522; s. c., 8 Pac. Rep. 70. A stockholder may maintain an action to set aside election of directors, although at time of election no stock had stood in his name on books sufficiently long to entitle him to vote. 1d.]

§ 13. The State shall not in any manner loan its credit, nor shall it subscribe to or be interested in the stock of any company, association, or corporation.

See art. IV, § 31.

§ 14. Every corporation other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of

stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

Corporation may be sued at its principal place of business. Art. IV, § 16. Such place must be stated in articles. C. C., § 290. But may be changed. C. C., § 321 (a). Records must be kept. C. C., §§ 377, 378; Pen. C., §§ 593, 599. Legislature may examine. C. C., § 383. Transfer of shares. C. C., §§ 324, 325. Banking corporation to keep certain records. C. C., § 321.

§ 15. No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.

Service of summons on foreign corporation. C. C. P., §§ 411, 412. Action for usurpation. Id., §§ 803 et seq.

§ 16. A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases.

Principal place of business, what is. Art. XII, § 14, and note. Power to sue and be sued. C. C., § 354 (2), and note. Judgment against and sale of corporate property. C. C., §§ 388-393. Service of summons upon corporation. C. C. P., §§ 411, 412. Appointment of receiver. Id., §§ 564, 565, 568. Actions for usurpations. Id., §§ 803 et seq. Criminal procedure against corporation. Pen. C., §§ 1390-1397.

[This section not in conflict with fourteenth amendment of United States Constitution. *Lewis v. R. R. Co.*, 66 Cal. 209; s. c., 5 Pac. Rep. 79. In an action against a corporation to recover damages for breach of contract, defendant is entitled to a change of venue to county in which its principal place of business is situated, when county in which action was brought is not the one in which contract was made or to be performed, or in which the obligation or liability arose or the breach occurred, or in which principal place of business of the corporation is situated. *Cohn v. R. R. Co.*, 71 Cal. 488; s. c., 12 Pac. Rep. 498. Action against domestic insurance corporation may be brought and tried in county where contract of insurance was completed, and the corporation defendant is not entitled to a change of venue to county where it has its principal place of business, if contract was not completed therein, although policy was there issued. *Yore v. Bankers, etc., Assn.*, 88 Cal. 669; s. c., 26 Pac. Rep. 514. Liability of corporation to grant redemption of mortgage; place where arose. *Baker v. Ins. Co.*, 73 Cal. 182; s. c., 11 Pac. Rep. 686. Action against railroad corporation for refusal to carry lumber. Action is presumptively brought in proper county, and to secure change of venue must be shown that breach did not occur in that county. *Chase v. R. R. Co.*, 83 Cal. 468; s. c., 23 Pac. Rep. 522. This section is merely permissive, and not mandatory. *Bank v. Superior Ct.*, 83 Cal. 492; s. c., 24 Pac. Rep. 157. Under this section, association of persons organized for a particular

purpose, although not formally a corporation, may be sued for negligence in county where its liability arose. *Kendrick v. Mining Co.*, 94 Cal. 137; s. c., 29 Pac. Rep. 324.

Place of residence of a corporation is in county where principal place of business is situated, and that is proper county for bringing actions, subject to above constitutional provision. *McSherry v. Mining Co.*, 97 Cal. 637; s. c., 32 Pac. Rep. 711.

In an action against corporation brought out of the county where it has principal place of business, where no motion was made to change venue, a decision upon an application of defendant for a writ of prohibition to restrain further proceedings is res adjudicata. *White v. Bank*, 98 Cal. 166; s. c., 32 Pac. Rep. 979.

Place of residence of a corporation is in county where it has its principal place of business, but a corporation defendant cannot insist upon change of venue, where it has been sued in county where its liability arose. *Trezevant v. Strong Co.*, 102 Cal. 47; s. c., 36 Pac. Rep. 395. Action against newspaper for libel; place of trial. *Brady v. "The Times-Mirror Co."*, 106 Cal. 56; s. c., 39 Pac. Rep. 209.]

§ 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose, under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

See §§ 18-23, post.

§ 18. No president, director, officer, agent, or employe of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

§ 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket by a member of the legislature or any public officer, other than railroad commissioner, shall work a forfeiture of his office.

§ 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again

raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights.

§ 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

[Section cited. *Ex parte Moynier*, 65 Cal. 35; s. c., 2 Pac. Rep. 728. Held to have no application to case at bar. *Ex parte Casinello*, 62 Cal. 539. This section prevents any legislative discrimination in favor of railroads situated within one county only. *Peo. v. R. R.*, 83 Cal. 394; s. c., 23 Pac. Rep. 303. Tests of special legislation. *Id.*]

§ 22. The State shall be divided into three districts as nearly equal in population as practicable, in each of which one railroad commissioner shall be elected by the qualified electors thereof at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years, commencing on the first Monday after the first day of January next succeeding their election. Said commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employee; and the act of a majority of said commissioners shall be deemed the act of said commission. Said commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpoenas and all other necessary process; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as courts of record, and enforce their decisions and correct abuses through the medium of the courts. Said commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies. Any railroad corporation or transportation

company which shall fail or refuse to conform to such rates as shall be established by such commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employee of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the judge or jury, recover exemplary damages. Said commission shall report to the governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of charter or otherwise, and may confer such further powers on the commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing section. The legislature shall have power, by a two-thirds vote of all the members elected to each house, to remove any one or more of said commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever, from any cause, a vacancy in office shall occur in said commission, the governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

§ 23. Until the legislature shall district the State, the following shall be the railroad districts: The first district shall be composed of the counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one railroad commissioner shall be elected. The second district shall be composed of the counties of Marin, San Francisco, and San Mateo, from which one railroad commissioner shall be elected. The third district shall be composed of the counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and

Taxation; Chinese, Const., Art. xii, § 24; Art. xiii, §§ 1, 6, 11; Art. xvii, § 3; Art. xix, § 2.

Ventura, from which one railroad commissioner shall be elected.

§ 24. The legislature shall pass all laws necessary for the enforcement of the provisions of this article.

### ARTICLE XIII.

#### Taxation.

§ 1. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include \* \* \* bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. \* \* \*

"Property" defined. Pol. C., § 3617. Double taxation prohibited. Id., § 3607. Shares of stock not taxable. Id., § 3608. Assessments, how and by whom made. Id., §§ 3628, 3641.

§ 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

Special privileges not to be granted. Art. I, § 21.

§ 11. Income taxes may be assessed to and collected from persons, corporations, joint-

stock associations, or companies resident or doing business in this State; or any one or more of them, in such cases and amounts, and in such manner, as shall be prescribed by law.

Stock in corporations not taxable. Pol. C., § 3608.

### ARTICLE XVII.

#### Land Exemption.

§ 3. The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

### ARTICLE XIX.

#### Chinese.

§ 2. No corporation now existing or hereafter formed under the laws of this State shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The legislature shall pass such laws as may be necessary to enforce this provision.

## CODES AND STATUTES OF CALIFORNIA—1886.

## POLITICAL CODE.

## Part III. Government of the State.

## TITLE VI. PUBLIC OFFICERS.

## CHAPTER III.

## Governor.

Sec. 380. Powers and duties of the governor.

§ 380. In addition to those prescribed by the Constitution, the governor has the power and must perform the duties prescribed in this and the following sections:

6. He may require the attorney-general or district attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this State.

\* \* \* \* \*

## CHAPTER V.

## Secretary of State.

Sec. 416. Fees of.

§ 416. (As amended March 16, 1895.) The secretary of State, for services performed in his office, must charge and collect the following fees:

3. For filing articles of incorporation, five dollars.

4. For recording articles of incorporation, twenty cents per folio.

5. For issuing each certificate of incorporation, three dollars.

13. For filing certificate of increase or decrease of capital stock, five dollars.

14. For issuing certificate of increase or decrease of capital stock, three dollars.

15. For filing certificate of continuance of existence, five dollars.

16. For issuing certificate of continuance of existence, three dollars.

18. For recording miscellaneous documents or papers, per folio, twenty-five cents.

\* \* \* \* \*

## TITLE IX. REVENUE.

## CHAPTER I.

## Property Liable to Taxation.

Sec. 3607. Double taxation prohibited.

3608. Shares of stock in corporations not taxable.

§ 3607. (As amended March 28, 1895.)

\* \* \* Nothing in this Code shall be construed to require or permit double taxation.

See § 3608, note.

§ 3608. Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent, and the assessment and taxation of such shares and also of the corporate property would be double taxation. Therefore all property belonging to corporations shall be assessed and taxed, but no assessment shall be made of shares of stock, nor shall any holder thereof be taxed therefor.

Income taxes. Const., art. XIII, § 11. Double taxation. § 3607.

[The rule as laid down in this section is also laid down in *San Francisco v. Mackey*, 3 West Coast Rep. 697. It would be assessing same property twice to assess to a corporation all of its corporate property, and also to assess to each of the stockholders stock or shares held by him. *Peo. v. Badlam*, 57 Cal. 594. The legislature has power to declare that corporate property shall be assessed to the corporation, and that the same property shall not be again assessed against the stockholders. *Id.* An assessment upon "the capital" of a corporation, *eo nomine*, held to be valid. *San Francisco v. Water-Works*, 54 Cal. 571. The revenue act does not make a corporation liable for taxes assessed on its capital stock, when such capital is represented by shares of stock which are not the property of the corporation. *Peo. v. Bank*, 51 Cal. 508. Above section applied. *Water-Works v. Schottler*, 62 Cal. 115.]

## CHAPTER II.

## Definitions.

Sec. 3617. "Property" defined.

§ 3617. (As amended March 28, 1895.) Whenever the terms mentioned in this section are employed in this act, they are employed in the sense hereafter affixed to them:

First. The term "property" includes \* \* \* bonds (except of railroad or quasi public corporations), stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership.

\* \* \* \* \*

All property to be taxed. Const., art. XII, § 1. Stock. § 3608.

[Franchises are property, and are to be taxed in proportion to their value. *Gas Co. v. January*, 57 Cal. 614; *Burke v. Badlam*, *Id.* 594; *Water-Works v. Schottler*, 62 *Id.* 72; *Gas Co. v. Schottler*, *Id.* 119; *The Freight case*, 15 Wall. 282; *Ry. Gross Receipts case*, *Id.* 296; *State v. R. R. Tax cases*, 42 U. S. 603. Section referred to. *Water-Works v. Schottler*, 62 Cal. 115.]



Business corporation; formation, Pol. C., §§ 3628, 3641; Civ. C.; §§ 283-285.

### CHAPTER III.

#### Assessment of Property.

Sec. 3628. Assessments, how and by whom made.  
3641. Property of corporations assessed where situated.

§ 3628. (As amended March 28, 1895.) The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State board of equalization, as hereinafter provided for. Other franchises, if granted by the authorities of a county, city, or city and county, must be assessed in the county, city, or city and county within which they were granted; if granted by any other

authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business. All other taxable property shall be assessed in the county, city, or city and county, town, township, or district in which it is situated. \* \* \*

§ 3641. The property of every firm or corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

[This section does not apply to shares in a mining corporation constituted under the laws of this State and whose tangible property is situated elsewhere. *San Francisco v. Flood*, 64 Cal. 504; s. c., 2 Pac. Rep. 264.]

### CIVIL CODE.

#### Division First. Part IV. Corporations.

#### TITLE I. GENERAL PROVISIONS APPLICABLE TO ALL CORPORATIONS.

- Ch. 1. Formation of corporations.
2. Corporate stock.
3. Corporate powers.
4. Extension and dissolution of corporations.

### CHAPTER I.

#### Formation of Corporations.

- Art. I. Corporations defined and how organized.
- II. By-laws, directors, elections, and meetings.

#### ARTICLE I. CORPORATIONS DEFINED AND HOW ORGANIZED.

- Sec. 283. Corporation defined.
284. What are public and private corporations.
285. Corporations, how formed.
286. For what purpose private corporations are formed.
287. How corporations may continue their existence under this Code.
288. Existing corporations not affected.
289. Name of instrument creating corporation.
290. Articles of incorporation, what to contain.
291. Certain corporations to state further facts in articles.
292. Five incorporators, three to be citizens of the State, to sign articles and acknowledge the same.
293. Prerequisite to filing articles. Amounts to be subscribed to be fixed.
294. Prerequisite to filing articles of corporations for profit.
295. Oath of officer to subscription of stock and payment of ten per cent.
296. To file articles with county clerk and secretary of State, and receive certificate. Term of existence.
297. Certified copy of certificate to be prima facie evidence of its contents.
298. Who are members and who stockholders of a corporation.
299. Copy of articles to be filed where corporation owns property.
300. Banking corporations may elect to have capital stock.

§ 283. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law,

it may continue for any length of time which the law prescribes.

What is included in term "corporation." Const., art. XII, § 4. "Person" includes corporations. C. C. P., § 17; Pen. C., § 7.

[A corporation for commercial purposes, formed under our statute, is little more than a joint-stock company under English laws, more nearly resembling a limited partnership under special articles than a corporation at common law. *Chater v. Refining Co.*, 19 Cal. 219.

Above section referred to and applied. *Dean v. Davis*, 51 Cal. 406.]

§ 284. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the State; all other corporations are private.

[Quasi public corporations have in view some public enterprise in which the interests of the local or general public are involved. Under above section they are classed as public. *Ditch Co. v. Zellerbach*, 37 Cal. 543. A levee district is such. *Dean v. Davis*, 51 Cal. 409.]

§ 285. Private corporations may be formed by the voluntary association of any five or more persons, in the manner prescribed in this article. A majority of such persons must be residents of this State.

See Const., art. XII, § 1. How formed. C. C., §§ 289-296.

[In incorporating under the general law a strict compliance with all requirements of the statutes is not essential, and the proceedings will not be held invalid for slight defects or omissions. Irregularities can only be investigated in a direct proceeding instituted by the State for that purpose, and not in a collateral action. *Water-Works v. San Francisco*, 22 Cal. 424; *Ex parte S. v. W. W.*, 17 id. 132; *Peo. v. R. R. Co.*, 45 id. 303; *Asylum v. Abrams*, 49 id. 455. But the omission of such acts as are declared necessary steps in the process of incorporation will be fatal, even collaterally, when the fact of incorporation can be questioned. *Mining Co. v. Woodbury*, 14 Cal. 424; *Harris v. McGregor*, 29 id. 125; *Peo. v. Selfridge*, 52 id. 331.]

§ 286. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves.

[In view of above section, the extent of the failure of the exercise of all such enlarged powers by corporations is beyond the reach of the courts. *Low v. R. R. Co.*, 52 Cal. 60. Above section repeals all provisions of law inconsistent with it. *Tulley v. Tranor*, 53 Cal. 279.]

§ 287. Any corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this State, and still existing, which has not already elected to continue its existence, under the provisions of this Code applicable thereto, may, at any time thereafter, make such election by the unanimous vote of all its directors, or such election may be made at any annual meeting of the stockholders or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of corporation are filed, and a certified copy thereof must be filed in the office of the secretary of State; and thereafter the corporation shall continue its existence under the provisions of this Code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby.

See Const., art. XII, §§ 6, 7.

[A corporation organized prior to adoption of the Codes, having continued its existence under the Codes, becomes a Code corporation, and may extend the terms of its existence, in conformity with Code, beyond period of its existence. *Peo. v. Pfister*, 57 Cal. 532.]

A banking corporation, whose original incorporation was attacked, was allowed to continue under the Code. *Peo. v. Perrin*, 56 Cal. 345.]

§ 288. No corporation formed or existing before twelve o'clock, noon, of the day upon which this Code takes effect, is affected by the provisions of part four of division first of this Code, unless such corporation elects to continue its existence under it as provided in section two hundred and eighty-seven; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section.

See Const., art. XII, § 6.

[See *Heyneman v. Blake*, 19 Cal. 579; *Water-Works v. Bryant*, 52 id. 141; *Estate of Eastman*, 60 id. 308.]

§ 289. The instrument by which a private corporation is formed is called "articles of incorporation."

§ 290. (As amended March 31, 1891.) Articles of incorporation must be prepared, setting forth:

1. The name of the incorporation.
2. The purpose for which it is formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist, not exceeding fifty years.
5. The number of its directors or trustees, which shall not be less than five nor more than eleven, and the names and residence of those who are appointed for the first year; Provided, That the corporate powers, business, and property of corporations formed or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for other purposes, may be conducted, exercised, and controlled by a board of not less than five nor more than fifty directors, to be chosen from among the stockholders of such corporation, or from among the members of such order or organization; And provided, also, That at any time during the existence of corporations for profit, other than those of the character last hereinabove provided for, the number of the directors may be increased or diminished, by a majority of the stockholders of the corporation, to any number not exceeding eleven nor less than five, who must be members of the corporation; whereupon, a certificate, stating the number of directors, must be filed, as provided for in section two hundred and ninety-six for the filing of the original articles of incorporation; And provided, also, That the corporate powers, business, and property of corporations formed, or to be formed, for social purposes, and not directly for profit, may be exercised, conducted, and controlled by a board, consisting of such number of directors as may be in the Constitution or by-laws provided; and corporations so formed may, in their constitution or by-laws, provide for the length of time that the directors, or any number thereof, shall act, and may, in like manner, provide that certain directors, or a certain number of the board of directors, to be selected by the corporation or the board of directors, in the mode and manner provided in the Constitution or by-laws, shall act for any specified length of time, or otherwise, as shall be in the Constitution or by-laws set forth.
6. The amount of its capital stock, and the number of shares into which it is divided.

Articles of incorporation; filing, Civ. C., §§ 291-296.

7. If there is a capital stock, the amount actually subscribed, and by whom.

Articles, how amended. C. C., § 362.

[Omission to state place where its principal business is to be transacted is fatal. *Harris v. McGregor*, 29 Cal. 124.

A failure to describe it as the "principal place of business" is a mere technical error. *Ex parte S. V. W. W.*, 17 Cal. 132.

Omission in affidavit, in regard to payment of ten per cent. of the subscribed stock, and of the words "in good faith," was deemed immaterial. *Peo. v. R. R. Co.*, 45 Cal. 306.

Omission of the original certificate to state amount of capital stock held cured by subsequent legislation. *Peo. v. Perlin*, 56 Cal. 345.

Statement in certificate of a term of existence greater than that allowed by law is not fatal. *Peo. v. Cheeseman*, 2 W. C. R. 270.

Section cited. *R. R. Co. v. Hildreth*, 53 Cal. 128; *Thomas v. Mining Co.*, 65 id. 601; s. c., 4 Pac. Rep. 641; *Chapman v. Doray*, 89 Cal. 54; s. c., 26 Pac. Rep. 605.

In formation of a corporation, substantial rather than literal compliance with each provision of the statutes is necessary. *Peo. v. Water Co.*, 97 Cal. 276; s. c., 32 Pac. Rep. 236.]

§ 291. The articles of incorporation of any railroad, wagon road, or telegraph organization must also state:

1. The kind of road or telegraph intended to be constructed.

2. The place from and to which it is intended to be run, and all the intermediate branches.

3. The estimated length of the road or telegraph line.

4. That at least ten per cent. of the capital stock subscribed has been paid in to the treasurer of the intended corporation.

[Articles of incorporation of a railroad must fully set forth amounts subscribed, and by whom. *R. R. Co. v. Hildreth*, 53 Cal. 123.]

§ 292. The articles of incorporation must be subscribed by five or more persons, a majority of whom must be residents of this State, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property. (In effect July 1, 1874.)

[Requirement of this section is a condition precedent to a valid incorporation; an acknowledgment of articles by only four incorporators is fatally defective. *Peo. v. Water Co.*, 97 Cal. 276; s. c., 32 Pac. Rep. 236.

Not necessary to validity of corporation, or to the subscribers who agree to its formation becoming stockholders, that they should all sign the articles of incorporation. *San Joaquin, etc., Co. v. Beecher*, 101 Cal. 70; s. c., 35 Pac. Rep. 349. Nor is it necessary that certificates of stock should have been issued. *Id.*]

§ 293. Each intended corporation named in section two hundred and ninety-one, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amounts, to wit:

1. One thousand dollars per mile of railroad.

2. One hundred dollars per mile of telegraph lines.

3. Three hundred dollars per mile of wagon roads.

See § 291, note.

[Section referred to. *R. R. Co. v. Hildreth*, 53 Cal. 128.]

§ 294. Before the articles of incorporation of any corporation referred to in the preceding section are filed, there must be paid, for the benefit of the corporation, to a treasurer elected by the subscribers, ten per cent. of the amount subscribed.

[Under this statute, payment by check drawn on the bank where drawer had no funds is insufficient. *Peo. v. Chambers*, 42 Cal. 201. But payment of the ten per cent. in good faith by checks drawn upon a sufficient deposit and payable in present, would be a sufficient compliance. *Peo. v. R. R. Co.*, 45 Cal. 306.]

§ 295. Before the secretary of State issues to any such corporation a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary, or treasurer named in the articles, that the required amount of the capital stock thereof has been actually subscribed, and ten per cent. thereof actually paid to a treasurer for the benefit of the corporation.

Signing fictitious name or fraud in the subscription. Pen. C., § 557.

[In making this affidavit, substantial, not a literal, compliance with statute is all that is required. *Peo. v. R. R. Co.*, 45 Cal. 306.]

§ 296. Upon filing the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county clerk, with the secretary of State, and the affidavit mentioned in the last section, where such affidavit is required, the secretary of State must issue to the corporation, over the great seal of the State, a certificate that a copy of the articles, containing the required statement of facts, has been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate, by the name stated in the certificate, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated or in this Code otherwise specially provided. (In effect July 1, 1874.)

Correction of erroneous filing. C. C., § 363. Articles must be filed in every county where corporation owns property. C. C., § 299.

[Filing articles in wrong county fatal to creation of corporation de facto. *Martin v. Deetz*, 102 Cal. 55; s. c., 36 Pac. Rep. 368.

Prior to adoption of Code, a corporation had legal existence from time of filing certificate with

county clerk. *M. H. M. Co. v. Woodbury*, 14 Cal. 424.

Section cited. *Wickersham v. Brittan*, 33 Cal. 39; s. c., 28 Pac. Rep. 792; 29 id. 51; *Canal, etc., Co. v. Warner*, 72 Cal. 382; s. c., 14 Pac. Rep. 37.]

§ 297. (As amended March 8, 1895.) A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of State, or by the county clerk of the county where the original articles shall have been filed, must be received in all the courts of this State, and other places, as prima facie evidence of the facts therein stated.

[Certified copy of articles of incorporation is prima facie evidence of the facts therein stated. *S. V. W. v. San Francisco*, 22 Cal. 431; *Mining Co. v. Allmont*, 26 id. 286.

Section referred to and applied. *Canal, etc., Co. v. Warner*, 72 Cal. 382; s. c., 14 Pac. Rep. 37. A certified copy of the certificate is not in any sense secondary evidence, but is by law made equal in all respects with the original, as evidence. *Tunnell Co. v. McKenzie*, 67 Cal. 487; s. c., 8 Pac. Rep. 22.]

§ 298. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

Liability of stockholders. Const., art. XII, § 3; C. C., § 322.

§ 299. No corporation hereafter formed shall purchase, locate, or hold property in any county in this State, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of State, duly certified by such secretary of State, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this Code or not, must, within ninety days after the passage of this section, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this State in which it holds any property (except the county where the original articles of incorporation are filed); and if any corporation hereafter acquire any property in any county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies so filed with the several county clerks, and certified copies thereof, shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation, and such certified copy of its articles of incorporation, and such certified copy of the copy of its articles of incorporation, shall be filed at the places di-

rected by the general law and this section; Provided, That all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; And provided further, That the said damages may be recovered in an action brought in any court of this State of competent jurisdiction, by any party or parties suffering the same. (In effect April 23, 1880.)

Corporation not to hold land more than five years. Const., art. XII, § 9. Amount it may hold. C. C., § 360. Right to hold real estate. C. C., § 354 (6).

[An objection that a corporation defendant in an action to quiet title to land had not proved compliance with provisions of above section cannot be taken for first time upon appeal. *Laboratory v. Asylum*, 97 Cal. 279; s. c., 32 Pac. Rep. 231.

Failure to comply with above section does not prevent a corporation from defending an action brought against it to recover for work and labor alleged to have been performed on its property. *Weeks v. Mining Co.*, 73 Cal. 399; s. c., 15 Pac. Rep. 302. Noncompliance with above section is a matter to be set up by defendant in an action of ejectment brought by the corporation. Denial of existence of the corporation does not raise the question. *R. R. Co. v. Purcell*, 77 Cal. 69; s. c., 18 Pac. Rep. 886. In an action by a corporation in relation to its property, it is not essential that the complaint should show compliance with above section. *Bank v. Tibbits*, 80 Cal. 68; s. c., 22 Pac. Rep. 63. Failure to comply is a mere matter in abatement of an action brought by it in relation to such property; and in order to be available as a defense must be specially pleaded in the answer; otherwise it is waived. *Id.* But averment denying the corporate existence and alleging that it has not legal capacity to sue, does not set up such defense. *Id.* It is clear that above section applies only to corporations whose articles are required by statute to be filed with the secretary of State. *Mora v. Murphy*, 83 Cal. 17; s. c., 23 Pac. Rep. 63.]

§ 300. Every corporation that has been or may be created under the general laws of this State, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor, in the same manner as corporations formed under the provisions of chapter I, article I, of the Civil Code, relating to the formation of corporations; Provided, That no such corporation shall use or convert any moneys or funds theretofore belonging to it or under its control, into capital stock; but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and place of holding such meeting, and its object, must be given by the president of such corporation, by publication in some newspaper

## By-laws; directors, Civ. C., §§ 301-303.

printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of the meeting. A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed, and by whom, all duly certified by the president and secretary of the corporation, must be filed in the offices of the secretary of State and clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers, and is subject to all the obligations, restrictions, and limitations, as if it had been originally created with a capital stock; and provided further, That no bank in this State shall ever pay any dividend upon so called guaranty notes, nor upon any stock, except upon the amount actually paid in money into said capital upon such stock, and any payment made in violation of this provision shall render all officers and directors consenting to the same jointly and severally liable to the depositors to the extent thereof. (In effect May 28, 1878.)

Certain records to be kept by banking corporation. C. C., § 321.

[Banking company held to have complied with above provisions. *Peo. v. Perrin*, 56 Cal. 349; see, also, *Hallemund v. Bank*, 74 id. 600; s. c., 16 Pac. Rep. 497.]

## ARTICLE II. BY-LAWS, DIRECTORS, ELECTIONS AND MEETINGS.

Sec. 301. Adoption of by-laws, when, how, and by whom.

302. Directors, election of, etc.

303. By-laws may provide for what.

304. By-laws to be copied and open for public inspection.

305. How many and who to be directors.

306. Elections, how conducted.

308. Organization of board of directors, etc.

309. Dividends to be made from surplus profits.

310. Removal from office of directors, etc.

311. Justice of the peace may order meeting when.

312. Majority of stock must be represented.

313. All stock may be represented in votes.

314. Election may be postponed.

315. Complaints and quo warranto regarding elections.

316. False certificate, report, or notice to make officers liable.

317. Meeting by consent to be valid.

318. Proceedings at meeting to be binding.

319. Meetings, where held.

320. When no provision in by-laws for regular meetings, special meetings how called.

321. Banking corporations required to keep certain books.

321(a). Domestic corporations may change place of business.

§ 301. Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the Constitution and laws of this State. The assent of stockholders repre-

senting a majority of all the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same, by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

Power to make by-laws. C. C., § 354 (6). May provide for what. C. C., § 303. May be repealed or amended. C. C., § 304.

[By-laws are void if contrary to Constitution or statutes, either of State creating the corporation or of the United States, or to the common law. *Peo. v. Crockett*, 4 Cal. 112; *United States v. Hart*, 1 Pet. C. C. 330; *Bank v. Lanier*, 11 Wall. 339. A corporation cannot pass by-laws imposing liens on stock so as to charge bona fide purchasers thereof. *Bank v. Bank*, 63 Cal. 359. By-laws cannot be adopted impairing vested rights. *Peo. v. Crockett*, supra. A stockholder is bound by charter and regularly adopted by-laws, whether he has signed them or not. *McLadden v. Supervisors*, 74 Cal. 571; s. c., 16 Pac. Rep. 397. The substantial rights of a stockholder cannot be taken from him, or abridged, by by-laws. *Bank v. Superior Ct.*, 194 Cal. 642; s. c., 38 Pac. Rep. 452.

By-laws adopted before organization held invalid under above section. *Vercoutere v. Land Co.*, 48 Pac. Rep. 375.]

§ 302. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as prescribed in section three hundred and one.

See Const., art. XII, § 12. Election may be postponed. C. C., § 314. Must be elected at first meeting. § 306. Manner of. § 307. See § 312, note.

[The notice of meeting must be given in manner prescribed by statute in order to be effectual. *Manf. Co. v. Vassault*, 50 Cal. 534. A notice must designate the hour as well as the day of meeting. Id. Notice of special meeting should be personal unless otherwise provided in charter or by-laws. *Harding v. Vandewater*, 40 Cal. 77. Section referred to. *Wickersham v. Brittan*, 63 Cal. 36; s. c., 28 Pac. Rep. 792; 29 id. 51.]

§ 303. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings, and may dispense with notice of all regular meetings of stockholders or directors.

2. The number of stockholders or members constituting a quorum.

3. The mode of voting by proxy.

4. The qualifications and duties of directors, and also the time of their annual election, and the mode and manner of giving notice thereof.

5. The compensation and duties of officers.

6. The manner of election and tenure of office of all officers other than the directors; and,

7. Suitable penalties for violations of by-laws, not exceeding in any case one hundred dollars for any one offense.

8. The newspaper in which all notices of the meetings of stockholders or board of directors, notice of which is required, shall be published, which must be some newspaper published in the county where the principal place of business of the corporation is located, or if none is published therein, then in a newspaper published in an adjoining county; Provided, That when the by-laws prescribe the newspaper in which said publication shall be made, if from any cause at the time any publication is desired to be made, the publication of such newspaper shall have ceased, the board of directors may, by an order entered on the records of the corporation, direct the publication to be made in some other newspaper published in the county, or if none is published therein, then in an adjoining county.

§ 2. Section three hundred and six of said Code is hereby repealed. (In effect March 19, 1889.)

Power to make by-laws. C. C., §§ 301, 354 (6). By-laws may provide for amount of stock to be owned by directors. C. C., § 305. For duties of directors. § 308. For issuing certificates of stock. § 323. For disposal of stock owned by the corporation. § 344.

[Special meeting of directors called contrary to by-laws held illegal. *Smith v. Dorn*, 96 Cal. 73; s. c., 30 Pac. Rep. 1024. Section construed as to election of directors. *Wickersham v. Brittan*, 92 Cal. 38; s. c., 28 Pac. Rep. 792; 29 id. 51. No decree or act of board of directors, made or done while not assembled as a board, is a valid corporate act. *Id.* Acts of a corporation which constitute a ratification of acts of its president, and estopped in pais, precluding corporation from questioning his authority. *Gribble v. Brewing Co.*, 100 Cal. 67; s. c., 34 Pac. Rep. 527. President must be a director. *Dulin v. Coal Co.*, 103 Cal. 357; s. c., 35 Pac. Rep. 1015; 37 id. 207. Agreement among stockholders as to election of president at a certain salary is void and cannot be enforced. *Id.* Trustees cannot vote a salary, or increase of salary, to one of their number as president, when his vote is essential to adoption of the resolution. *Wickersham v. Crittenden*, 106 Cal. 327; s. c., 39 Pac. Rep. 602.

Above section refers to the primary requirements to be followed in order that proxies may be entitled to vote, and does not authorize enrolling of right of voting by proxy, but only to regulate exercise of right by requiring that authorization must be in writing, properly witnessed, acknowledged, filed with the records, etc. *Bank v. Superior Ct.*, 101 Cal. 649; s. c., 38 Pac. Rep. 452.]

§ 304. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand in some book kept in the office of the corporation, to be known as the

"Book of By-laws," and no by-law shall take effect until so copied, and the book shall then be opened to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two-thirds of the stock, or two-thirds of the members if there be no capital stock, shall be effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, shall be stated in said book, and until so stated the repeal shall not take effect. (Approved March 14, 1885.)

[Effect of noncompliance with a statute as to the recording of by-laws. *Hall v. Crandall*, 29 Cal. 567. Section referred to. *Chapman v. Doray*, 89 Cal. 54; s. c., 26 Pac. Rep. 605.]

§ 305. The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted, and controlled by a board of not less than five nor more than eleven directors, to be elected from among the holders of stock; or, where there is no capital stock, then from the members of such corporations; except that corporations formed, or to be formed, for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for other purposes, the corporate powers, business, and property thereof may be conducted, exercised, and controlled by a board of not less than five nor more than fifty directors, to be chosen from among the stockholders of such corporation or from among the members of such order or organization. A majority of the directors must be in all cases citizens of this State. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting no business performed or act done

is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

"Director" defined. Pen. C., § 572. On dissolution, directors to be trustees of creditors. C. C., § 400. Liability of directors. Const., art. XII, § 3; C. C., § 327. Acts of directors. C. C., § 308.

[Corporate powers must be exercised by trustees selected from the stockholders. *Gashwiler v. Willis*, 33 Cal. 11; *Blood v. Marcuse*, 38 id. 593. Directors constitute the corporation for all purposes of dealing with others, and what they do as its representatives, the corporation itself is deemed to do. *Maynard v. Ins. Co.*, 34 Cal. 481. The fact that director is not a stockholder does not vitiate his case, he is de facto the representative of the corporation. *Bank v. S. & L. Co.*, 63 Cal. 179. The powers of a corporation must be exercised, and its property controlled, by its board of directors. No officer has authority to execute a mortgage of corporate property in absence of a resolution of such board. *Mining Co. v. Mining Co.*, 78 Cal. 632; s. c., 21 Pac. Rep. 373. Directors must be presumed to know at all times the condition of the business and property under their control. *Schenck v. Bandmann*, 81 Cal. 234; s. c., 22 Pac. Rep. 654. Distinction between "election" of directors and "appointment." *Wickersham v. Brittan*, 93 Cal. 34; s. c., 28 Pac. Rep. 792; 29 id. 51. A corporation can confer authority upon an agent to sell its lands only through its board of directors, when duly assembled, by resolution duly passed and recorded, and a ratification of such authority can only be made in the same manner. *Salfield v. Sutter, etc., Co.*, 94 Cal. 546; s. c., 29 Pac. Rep. 1105. Action by stockholder to set aside sale of corporate property by directors upon ground of fraud; general subject discussed. *Smith v. Dorn*, 96 Cal. 73; s. c., 30 Pac. Rep. 1024.]

§ 306. (Repealed. See § 303.)

§ 307. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in section three hundred and twelve of this Code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. In either case the directors receiving the highest number of votes shall be declared elected. The provisions of this section, so far as it relates to cumulative voting, shall not apply to literary, religious, scientific, social, or benevolent societies, unless it shall be so provided in their by-laws or rules.

§ 2. This act shall take effect immediately. (Approved March 10, 1887.)

See Const., art. XII, § 12. Elections, how conducted. C. C., § 312.

[Section applied. *Wickersham v. Brittan*, 93 Cal. 36.]

§ 308. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary, and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

See note to § 354 (5), C. C. Frauds and mismanagement by officers; penalty. Pen. C., §§ 557-572.

[Directors are agents of corporation only when acting as a board; as a general rule, they do not individually represent the corporation. *Gashwiler v. Willis*, 33 Cal. 11; *Blood v. Marcuse*, 38 id. 593. A note executed by the president to himself as payee, purporting to be note of the corporation, is invalid, unless authorized or ratified by directors, though the consideration be a debt honestly due. *Smith v. Assn.*, 78 Cal. 289; s. c., 20 Pac. Rep. 677. Directors who are directly interested in the passage of the resolution are not competent to vote thereon. Section referred to. *Wickersham v. Brittan*, 93 Cal. 38; s. c., 28 Pac. Rep. 792; 29 id. 51; *Salfield v. Sutter, etc., Co.*, 94 Cal. 549; s. c., 29 Pac. Rep. 1105.]

§ 309. (As amended March 31, 1891.) The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock, except as hereinafter provided, nor reduce or increase the capital stock, except as herein specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or where not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are liable by this section; Provided, however, That where a corporation has been heretofore or may hereafter be formed for the purpose, among other things, of acquiring, holding, and selling real estate, water, and water rights, the directors of such corporation may, with the consent of stockholders representing two-thirds of the capital stock thereof, given at a meeting called for that purpose, divide among the stockholders the land, water, or water rights so by such corporations held, in the proportions to which their holdings of such

## Removal of directors; elections, Civ. C., §§ 310-312.

stock at the time of such division would entitle them. All conveyances made by the corporation, in pursuance of this section, shall be made and received subject to the debts of such corporation existing at the date of the conveyance thereof. Nothing herein shall prohibit a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

Misconduct of directors as to dividends and accounts. Pen. C., § 560. Fraud in accounts. § 563. False reports. § 564. By absent director. §§ 569, 570. Director's liability for embezzlement of officers. Const., art. XII, § 3.

[The prohibition of above section is directed against the trustees, and is designed to protect creditors of such, and, also, to protect stockholders against their mismanagement in distributing capital stock in the form of dividends. *Martin v. Zellerbach*, 38 Cal. 300.

Any arrangement which will have the effect to withdraw the capital of any incorporated company, and turn it over to stockholders, except in manner provided by law, is in violation of above section, and void as to the creditors of the corporation, either prior or subsequent, who had no notice of the arrangement at time of giving the credit. *Id.* By capital stock, the statute intends the capital of the corporation on which it transacts business, whether such capital consists of money, property or other valuable commodities. *Id.* Dividends may be paid in scrip or in shares of stock. *Harris v. Refining Co.*, 41 Cal. 355. One who receives stock acquires thereby an interest in the undivided profits. *Id.* In order to recover dividends, plaintiff must have been the absolute owner of the stock when the dividends accrued. Mere possession of, or a special property therein, is not sufficient. *Dow v. Mining Co.*, 31 Cal. 630. Stockholders have no legal title to corporate property. Shares simply represent the right of shareholders to share in distribution of profits of the corporation, and in the final distribution of its assets when it ceases to exist. In advance of such final distribution, stockholders cannot even unanimously agree to a division of any part of the capital stock which the directors are forbidden to make. The method prescribed by the Code for dissolution is exclusive, and there can be no distribution of capital stock under any other circumstances. *Kohl v. Lillenthal*, 81 Cal. 378; s. c., 20 Pac. Rep. 401; 22 *id.* 689. The "capital stock" which directors are forbidden, by above section, to divide, is the actual property of the corporation contributed by the shareholders and of a nominal or share capital. *Mining Co. v. Pierce*, 90 Cal. 132; s. c., 27 Pac. Rep. 44. Inhibition of the section does not prohibit payments of dividends by a mining corporation from net proceeds of its mining operations, to be ascertained by deducting the gross outlay of current expenses from the gross receipts, and the balance, less a reasonable contingent reserve, would be legitimate subject of dividend. *Id.* A mining corporation may distribute its net earnings although the value of its mine is thereby diminished; and it is not deemed to have divided its capital, within meaning of above section, merely because it has distributed the net proceeds of its mining operations. *Id.* The fact that money was borrowed by directors to pay some of the dividends is not a violation of section 309, where it appears that the corporation had used surplus profits, equal in amount to dividends paid, for purpose of making needed improvements. *Id.* Declaring of dividends is intrusted to discretion of directors, which, when honestly and intelligently exercised, will not be slightly overruled. *Id.* The fact that notes and mortgages were executed by a corporation for indebtedness beyond subscribed capital stock, contrary to provision of section 309, does not render such notes and mortgages void. *Underhill v. Imp. Co.*, 93 Cal. 300; s. c., 28 Pac. Rep. 1049. Above section construed.

*Id.* Misappropriation of corporate property by trustees seeking to vote themselves the property of the corporation. *Shattuck v. S. & R. Co.*, 58 Cal. 550.

Legislature has power to declare that corporate property shall be assessed to the corporation, and that same property shall not be again assessed against the stockholders. *Peo. v. Badlam*, 57 Cal. 394.

Declaration of dividends largely a question of policy intrusted to discretion of directors, which will not be lightly overruled. *Zellerbach v. Allenberg*, 49 Cal. 57; s. c., 33 Pac. Rep. 786.

Statute of limitations for recovery of dividends from a corporation cannot be avoided on ground of fraud, when. *Hills v. Mining Co.*, 106 Cal. 9; s. c., 39 Pac. Rep. 43.

A by-law providing for surrender of stock and payment of value, held illegal, under above section. *Vercoutere v. Land Co.*, 48 Pac. Rep. 375.]

§ 310. No director shall be removed from office, unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section three hundred and one of this title, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

§ 311. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

§ 312. At all elections, or votes had for any purpose, there must be a majority of the subscribed capital stock, or of the members, represented either in person or by proxy in writing. Every person acting therein [in person, or by proxy, or representative] must be a member thereof, or a bona fide stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent [or any] stockholders or



members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if, for any reason, there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors. (In effect April 1, 1878.)

See § 307, ante. Notice of meeting. § 302.

[A surviving partner has the right to vote stock in his hands as partnership assets at an election for officers of a corporation. And the fact that a portion of the stock stood upon the books of corporation in name of deceased partner alone, does not affect such right, if in fact the stock belongs to the partnership. *Allen v. Hill*, 16 Cal. 114. Semble upon principle that real owner of stock is entitled to represent it at meetings of the corporation, notwithstanding he does not appear as owner upon books of company. *Id.* Person to whom stock has been issued as trustee, without knowledge or consent of owners, is not bona fide stockholder within meaning of above section; and where, without stock thus issued, a majority of stock is not represented at a meeting for election of trustees, the election is void. *Stewart v. Mining Co.*, 54 Cal. 149. Person appearing from books of company to be owner of stock is entitled to vote it, although he has transferred it, transference not appearing with the stock and objecting. *Peo. v. Robinson*, 64 Cal. 373; s. c., 1 Pac. Rep. 156. Stockholder may maintain action to set aside election of directors, although at time of election no stock had stood in his name on books of corporation sufficiently long to entitle him to vote. *Wright v. Water Co.*, 67 Cal. 532; s. c., 8 Pac. Rep. 70. The superior court has jurisdiction as a court of equity to inquire into validity, and to set aside such an election. *Id.* Every qualified stockholder present at an election has right to vote at one time the property or shares owned by him for the whole number of directors to be elected, or to cumulate his shares upon one candidate, or to distribute them among as many candidates as he may see fit; a corporation has no power to adopt any other mode of election. *Id.* "Election" distinguished from "appointment." *Wickersham v. Brittan*, 93 Cal. 34; s. c., 28 Pac. Rep. 792; 29 *id.* 51.

Pledgor of stock has right to vote it, where pledgee does not claim the right under agreement with pledgor. *Dulin v. Coal Co.*, 103 Cal. 357; s. c., 35 Pac. Rep. 1045; 37 *id.* 207.

A by-law of a banking corporation providing that no proxy should be voted by anyone not a stockholder of the corporation is void, as being an infringement upon above statute. *Bank v. Superior Ct.*, 104 Cal. 649; s. c., 38 Pac. Rep. 452.]

§ 313. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator.

§ 314. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders, as provided in section three hundred and ten of this article.

Adjournment of meeting. § 312, note.

§ 315. Upon the application of any person, or body corporate, aggrieved by any election held by any corporate body, the district court of the district in which such election is held must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party, or those to be affected thereby. (In effect April 1, 1878.)

[Above section has application only to elections which are by statute authorized to be made by the stockholders, and does not include an appointment made by directors to fill vacancies. "Election" distinguished from "appointment." *Wickersham v. Brittan*, 93 Cal. 31; s. c., 28 Pac. Rep. 792; 29 *id.* 51. A "corporate body" referred to is the corporation itself, and not the board of directors. *Id.* The superior court has jurisdiction to entertain proceedings under section 312 and section 315 of the Civil Code. *Id.* Suit to set aside election of directors; staying action of director pending appeal. *Dulin v. W. & C. Co.*, 98 Cal. 304; s. c., 33 Pac. Rep. 123.]

§ 316. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable. (In effect July 1, 1874.)

See Pen. C., §§ 558, 564.

§ 317. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed.

§ 318. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

§ 319. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.

Place of business may be changed. § 321(a).

§ 320. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in

writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors.

[Under this section, it is not required that notice of special meeting of directors should specify purpose of meeting. A notice that the meeting will be held, place where, and time when it will be held, will be sufficient. *Granger v. Mining Co.*, 59 Cal. 679. In absence of contrary proof, notice to directors of a meeting will be presumed, though not recited in the record of the meeting. *Id.*; *Harding v. Vandewater*, 40 Cal. 78, distinguished. Each director must have special notice of regular meetings of board of directors, unless provision is made in by-laws for such meetings. *Thompson v. Williams*, 76 Cal. 151; s. c., 18 Pac. Rep. 153.]

§ 321. Every corporation doing a banking business in this State must keep in its office, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book containing a list of all stockholders in such corporation, and the number of shares of stock held by each; and every such corporation must keep posted in its office, in a conspicuous place, accessible to the public generally, a notice signed by the president or secretary, showing:

First, The names of the directors of such corporation.

Second, The number and value of shares of stock held by each director.

The entries on such book and such notice shall be made and posted within twenty-four hours after any transfer of stock, and shall be conclusive evidence against each director and stockholder of the number of shares of stock held by each. The provisions of this section shall apply to all banking corporations formed or existing before twelve o'clock, noon, of the day on which this Code took effect, as well as to those formed after such time.

See Const., art. XII, §§ 5, 14; C. C., § 356.

[Section referred to and construed. *Chapman v. Doray*, 89 Cal. 51; s. c., 26 Pac. Rep. 695.]

§ 321a. Every corporation that has been or may be created under the general laws of this State may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this State. Before such change is made, the consent, in writing, of the holders of two-thirds of the capital stock must be obtained and filed in the office of the corporation. When such consent is obtained and filed, notice of the intended removal or change must be published, at least once a week, for three successive weeks, in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated, and that to which it is intended to remove it.

See Const., art. XII, § 11, and note.

## CHAPTER II.

### Corporate Stock.

- Art. 1. Stock and stockholders,  
II. Assessments of stock.

#### ARTICLE I. STOCK AND STOCKHOLDERS.

- Sec. 322. Liabilities of stockholders. They may be released, when.  
323. Certificates, how and when issued.  
324. Transfer of shares.  
325. Transfer of shares held by married women, etc. Dividends payable to married women.  
326. Non-resident stockholders. Bonds.  
327. Contract to relieve directors void.

§ 322. Each stockholder of a corporation is individually and personally liable for such portions of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders for the proportion of his claim, payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt; and if an action has been brought against him upon such debt, it shall be dismissed as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another, and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock, until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the

Certificates of stock, Civ. C., § 323.

cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person or estate represented, is to be deemed the stockholder as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other State or Territory of the United States, or of any foreign country, and doing business within this State, shall be the same as the liability of a stockholder of a corporation created under the Constitution and laws of this State.

See Const., art. XII, § 3.

[In this State each principal is answerable, personally, for his proportion of debts and liabilities of company. *Mining Co. v. Woodbury*, 14 Cal. 265. In California neither a strict or liberal construction is to be adopted where it will operate to defeat the obvious intent of the statute, but it should be reasonably construed. *Id.*; *Davidson v. Rankin*, 34 Cal. 505. A subscriber for shares is responsible as a stockholder, although he has not paid for his stock or received certificate. A corporation may give a subscriber credit for his stock as for any other property. Certificates of stock are mere evidence of property, which may exist without certificates. *Mitchell v. Beckman*, 64 Cal. 117; s. c., 28 Pac. Rep. 110; *In re Mining Co.*, 7 Saw. 30. Merely signing an agreement to take stock in an unincorporated company does not constitute one a stockholder after incorporation. *R. R. Co. v. Hildreth*, 53 Cal. 123.

One who never accepts, but refuses to accept, any stock is not a stockholder, even though secretary enters his name on the books as such. *Mudgett v. Horrell*, 33 Cal. 25. Liability of stockholder for corporate debts is primary and original, and not that of guarantor or surety. *Mining Co. v. Woodbury*, 14 Cal. 265; *Davidson v. Rankin*, 34 Cal. 503; *Young v. Rosenbaum*, 39 id. 646; *Bank v. Hill*, 59 id. 107; *Paymonville v. McCollough*, id. 285; *Mitchell v. Beckman*, 64 Cal. 117; s. c., 28 Pac. Rep. 110; *Morrow v. Superior Court*, 64 Cal. 383. Any legislation attempting to limit or postpone its liability, or make it secondary to that of the corporation, would be unconstitutional and void. (See Const., art. XII, § 3.) See, also, *French v. Teschemacker*, 24 Cal. 518; *Larrabee v. Baldwin*, 35 id. 155. The liability is not dependent or contingent upon the recovery against the corporation, nor is it affected by a suspension of the remedy against the corporation. *Davidson v. Rankin*, 34 Cal. 503; *Young v. Rosenbaum*, 39 id. 646. In an action against stockholder, no defense that corporate property which has been pledged to plaintiff remains undisposed of. *Bank v. Hill*, supra. But a discharge of all or part of debt of corporation is pro tanto a discharge of the liability of stockholders. *Bank v. Pharis*, 58 Cal. 380. As between themselves, corporation is principal debtor, and stockholders are sureties or guarantors. *Prince v. Lynch*, 38 Cal. 528. The action authorized by section 322 does not exclude the equitable remedy to enforce the payment of unpaid assessments on stock. *Harmon v. Page*, 62 Cal. 448. But otherwise in case of mining corporations. *In re Mining Co.*, 7 Saw. 30; s. c., 8 id. 306. A release of the corporation by the creditor releases stockholders. And where a creditor releases one stockholder from all personal liability, he thereby discharges corporation and other stockholders to same extent. *Prince v. Lynch*, 38 Cal. 538. The com-

plaint in an action to enforce liability of stockholders for indebtedness of corporation must state proportion of stock owned by defendant at time debt was incurred bears to whole subscribed stock at that time, or facts from which such proportion may be deduced. *Bidwell v. Babcock*, 87 Cal. 239; s. c., 25 Pac. Rep. 752. The liability of each stockholder to capital stock is several and not joint; therefore upon a creditor's bill by a judgment creditor, it is not necessary that all stockholders should be made parties defendant. *Baines v. Babcock*, 35 Cal. 582; s. c., 27 Pac. Rep. 644; 39 id. 776. The remedy given by section 322 is purely statutory, and furnishes to creditors of corporations additional security, by making stockholders directly liable for their proportion of corporate debts, and was not intended to diminish assets of corporation by releasing stockholders from their indebtedness to the corporation on account of unpaid subscriptions for stock, and to take away from the creditor the right to resort to a court of equity to compel its payment. *Id.*

Action against stockholder to recover his proportion of a corporate debt in an action upon a contract. *Kennedy v. Bank*, 97 Cal. 93; s. c., 31 Pac. Rep. 846. It must be commenced within three years after liability was created. *Hunt v. Ward*, 99 Cal. 612; s. c., 34 Pac. Rep. 235. *Bank v. Steamship Co.*, 103 Cal. 594; s. c., 37 Pac. Rep. 499. Statute of limitations runs from date and not maturity of indebtedness. *Hunt v. Ward*, supra. Pledgee of stock not necessarily liable. *Borland v. Bank*, 99 Cal. 89; s. c., 33 Pac. Rep. 737.

Action by judgment creditor to enforce unpaid subscription to stock; joinder of parties and cause of action held good. *Ryan v. Jacques*, 103 Cal. 280; s. c., 35 Pac. Rep. 186. Requisites and construction of pleadings. *Id.*

Stockholders may have benefit of statute of this State imposing liability on stockholders for their respective proportions of the corporate debts, as against other stockholders in same corporation. *Brown v. Merrill*, 107 Cal. 446; s. c., 40 Pac. Rep. 557. Stockholders in this State are not jointly or severally liable for corporate debts; but each stockholder has a several liability proportionately to amount of his stock; and when he has paid his portion of any debt, or of all corporate debts, he is free from all liability, and has no cause of action against any other stockholder for money so paid. *Id.* To enforce liability of stockholders, it is incumbent upon plaintiff to prove whole amount of stock outstanding to enable court to determine liability. *Knowles v. Sandercock*, 107 Cal. 629; s. c., 40 Pac. Rep. 1047.

What is sufficient proof of amount of stock subscribed. *Id.*

Stockholder who is a creditor of the corporation may sue other stockholders for their proportionate share of the liabilities. *Id.*

Jurisdiction of court under above section. *Grinwood v. Barry*, 118 Cal. 274; s. c., 50 Pac. Rep. 430.]

§ 323. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

[A corporation for profit may give credit to subscribers to its capital stock for stock; and may, by proper provisions in its by-laws, issue certificates to such stockholders prior to full payment for the stock. *L. & W. Co. v. Herberger*, 82 Cal. 603; s. c., 23 Pac. Rep. 134; *Mitchell v. Beckman*, 64 Cal. 117; s. c., 28 Pac. Rep. 110.

Cancellation of misissued certificates of stock does not effect cancellation of subscription, and such subscription cannot be cancelled, even by order of board of directors, without unanimous consent of all stockholders, except for fraud or mistake. *Fruit Co. v. Coon*, 107 Cal. 447; s. c., 40 Pac. Rep. 542.

Issuance of a certificate is not necessarily preliminary to ownership or assessability of stock. Rescission of subscription to stock may be proved by circumstantial evidence. *Burden of proof.* *Id.*]

§ 324. (As amended March 26, 1895.) When-ever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock, except as hereinafter provided, are personal property, and may be transferred by indorsement by the signature of the proprietor, his agent, attorney, or legal representative, and the delivery of the certificate; but such transfer is not valid, except as to the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by whom and to whom transferred, the number of the certificate, the number or designation of the shares, and the date of the transfer: Provided, however, That any corporation organized for, or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes or for domestic use, may in its by-laws provide that water shall only be so sold, distributed, supplied, or delivered to owners of its capital stock, and that such stock shall be appurtenant to certain lands when the same are described in the certificate issued therefor; and when such certificate shall be so issued, and a certified copy of such by-laws recorded in the office of the county recorder in the county where such lands are situated, the shares of stock so located on any land shall only be transferred with said lands, and shall pass as an appurtenance thereto.

See § 324 (6).

[Essentials of a sale of shares of stock so as to transfer title thereto. *Borland v. Bank*, 90 Cal. 89; s. c., 23 Pac. Rep. 737.

Except as between transferor and transferee, transfer of shares of stock is not valid until entered upon books. *Weston v. Mining Co.*, 5 Cal. 186. But a transfer not so entered upon books is good as to persons having actual notice of it. *Weston v. Mining Co.*, 6 Cal. 425; *Naglee v. Wharf Co.*, 20 id. 523; *Poe v. Elmore*, 35 id. 653; *Parrott v. Byers*, 40 id. 614; *Winter v. Mining Co.*, 53 id. 428. As between the parties, the certificate passes by indorsement and delivery. *Brown v. Gas Light Co.*, 58 Cal. 426. But it has been expressly declared by the supreme court that certificates of stock are not negotiable securities in a commercial sense. *Atkins v. Gamble*, 42 Cal. 99; *Barstow v. Mining Co.*, 64 id. 388; s. c., 1 Pac. Rep. 319; *Sherwood v. Mining Co.*, 50 Cal. 412. The bona fide purchaser of a certificate from the apparent owner takes the same freed from the defect in the transferor's title. *Winter v. Mining Co.*, 53 Cal. 428. The word "trustee" after the name of the transferor is not notice of secret equities. *Brewster v. Sime*, 42 Cal. 139; *Thompson v. Toland*, 48 id. 99. Mandamus will not lie to compel corporation to enter the transfer upon the company's books. Shareholder's remedy is in damages for refusal. *Kimball v. Water Co.*, 41 Cal. 173. But see *Poe v. Crockett*, 9 id. 112; *Sherwood v. Mining Co.*, 50 id. 412, where it seems to have been admitted that mandamus was the proper remedy. Articles of complaint in such action. *Edwards v. Bank*, 59 Cal. 136. Foreign executor's indorsement and delivery of certificate entitled transferee to have transfer made on company's books. *Brown v. Gas Light Co.*, 58 Cal. 426. It is not sufficient excuse for refusing to transfer stock that

assignor was indebted to company unless company had a lien upon the stock at time of transfer. *Poe v. Crockett*, 9 Cal. 112. A corporation may have a lien upon shares of a stockholder for his debt if by-laws so expressly provide. And whether such by-laws may be adopted depends upon charter. *Pendergast v. Bank*, 2 Saw. 108. In an action to determine ownership of stock, the corporation and purchaser with notice are proper parties defendant. *Johnson v. Kirby*, 3 West. Coast Rep. 482. Transfer by pledge of stock, where dividends thereon have equaled their indebtedness, will be enjoined. *Smith v. Mining Co.*, 14 Cal. 242. A by-law imposing a lien on stock, seeking to charge same therewith in hands of bona fide purchaser, is in conflict with above section, and not enforceable. *Bank v. Bank*, 63 Cal. 359; *Water Co. v. Herberger*, 82 id. 603; s. c., 23 Pac. Rep. 134. Section 324 applied. *Jennings v. Bank*, 79 Cal. 331; s. c., 21 Pac. Rep. 852; *Taft v. R. R. Co.*, 84 Cal. 137; s. c., 24 Pac. Rep. 436.

One who contracts to purchase stock on a given day must take it at that day. If he fails to do so he is liable for purchase price and interest and assessment levied after his breach of the contract. *Gay v. Dare*, 103 Cal. 454; s. c., 37 Pac. Rep. 466.]

§ 325. Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a feme sole. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman touching any shares of stock of any corporation owned by her is valid and binding without the signature of her husband, the same as if she were unmarried.

§ 326. When the shares of stock in a corporation are owned by parties residing out of the State, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant a bond of indemnity, with two sureties, satisfactory to the officers of the corporation; or, if not so satisfactory, then one approved by a district judge, or the county judge of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation. (In effect July 1, 1874.)

[Stock owned by non-resident may be sold by his executor and the certificate indorsed by the exec-

Assessments of stock, Civ. C., §§ 327-333.

ntors entitles purchaser to a transfer of stock upon the books. *Brown v. Gas Light Co.*, 58 Cal. 426.]

§ 327. Any contract or contracts, verbal or written, hereafter made, whereby it is sought directly or indirectly to relieve any director or trustee of any corporation or joint-stock association from any liability imposed by section three of article XII of the Constitution of California, are hereby declared to be and shall be null and void. (In effect April 12, 1880.)

[Section referred to and construed. *Silva v. Campbell*, 84 Cal. 422; s. c., 24 Pac. Rep. 316.]

ARTICLE II. ASSESSMENTS OF STOCK.

- Sec. 331. Directors may levy assessments.  
 332. Limitation. How levied.  
 333. Levy of assessment. Old assessment remaining unpaid.  
 334. What order shall contain.  
 335. Notice of assessment. Form.  
 336. Publication and service.  
 337. Delinquent notice. Form.  
 338. Contents of notice.  
 339. How published.  
 340. Jurisdiction acquired, how.  
 341. Sale to be by public auction.  
 342. Highest bidder to be the purchaser.  
 343. In default of bidders, corporation may purchase.  
 344. Disposition of stock purchased by corporation.  
 345. Extension of time of delinquent sale.  
 346. Assessments shall not be invalidated.  
 347. Action for recovery of stock, and limitation thereof.  
 348. Affidavits of publication. Affidavits of sale. To be filed.  
 349. Waiver of sale. Action to recover assessment.

§ 331. The directors of any corporation formed or existing under the laws of this State, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent, provided herein. (In effect July 1, 1874.)

[Corporations formed and existing under laws of this State may levy and collect assessments for corporate purposes on shares of stock upon which subscriptions have been fully paid. *R. R. Co. v. Spreckles*, 65 Cal. 193; s. c., 3 Pac. Rep. 661, 802. An assessment by an electric-light company for necessary repairs of its engine and machinery should be clearly authorized by above section. *Younglove v. Steinman*, 80 Cal. 375; s. c., 22 Pac. Rep. 189. Under our statutes, the only lien given to corporations for profit upon their subscribed capital stock, and which does not depend upon possession of certificate of stock, is to secure payment of assessments levied for the purpose of paying expenses, conducting business, and paying debts. *Water Co. v. Herberger*, 82 Cal. 603; s. c., 23 Pac. Rep. 134. Installments or "calls," referred to in above section, are not included in term "assessments" as used in the Constitution. *Water Co. v. Superior Ct.*, 92 Cal. 50; s. c., 28 Pac. Rep. 54. Stockholders' liability for unpaid assessments on corporate stock is founded on contract, and a justice's court has jurisdiction to enforce the same. *Alpers v. Superior Ct.*, 3 West Coast Rep. 526.

Where all stock is fully paid up it is assessable. *Green v. Medical Co.*, 96 Cal. 322; s. c., 31 Pac. Rep. 100. Assessments upon stock issued below par. Id.

When, by consent of all stockholders, reserved

stock is sold by corporation for less than its par value, it is to be considered as fully paid up stock. Id.

A stockholder is liable to pay his subscription to stock according to its terms. The full amounts may be called for at once, and it is not a necessary condition that directors should first have levied assessments upon the stock under the Code. *Kohler v. Agassiz*, 99 Cal. 9; s. c., 33 Pac. Rep. 741.

Assignee of an insolvent corporation succeeds to all the rights of the corporation to enforce subscription to stock. Id.

False relations of promoters of a corporation, effect of. *Water Co. v. Flash*, 97 Cal. 610; s. c., 32 Pac. Rep. 600. Promoter defined. Fiduciary relation to corporation. Id.; *Burbank v. Dennis*, 101 Cal. 90; s. c., 35 Pac. Rep. 414.

Fraudulent transaction by a promoter; corporation may elect either to set aside transaction, or to recover promoter's secret profits. Id. Knowledge by directors of fraud or promoters is not knowledge to stockholders. Id. Subscription for stock of a corporation subsequently to be formed will sustain an action on its complete incorporation, against subscribers to recover calls duly made upon the stock. *San Joaquin, etc., Co. v. Beecher*, 101 Cal. 70; s. c., 35 Pac. Rep. 349. Effect of organization upon executory contract to take stock. Id. Assessments upon stock levied by de facto officers are valid. Id.

Under above section complaint in action to collect assessment on stock is defective where it fails to show that one-fourth of capital stock has been subscribed. *Inv. Co. v. Merrill*, 41 Pac. Rep. 487.

In absence of any provision therefore, a corporation cannot levy on its capital stock until after full amount has been subscribed. Id.

A corporation cannot maintain action on subscription for a corporation to be formed for a different purpose. *L. & P. Co. v. Johnson*, 41 Pac. Rep. 1016.

Liability of stockholder who acquired his stock by purchase, and not by an original subscription. *H. & A. Works v. Houser*, 41 Pac. Rep. 809.]

§ 332. No one assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they may deem proper.

[Section referred to and applied. *R. R. Co. v. Spreckles*, 65 Cal. 194; s. c., 2 West Coast Rep. 752, 833; *L. & P. Co. v. Johnson*, 93 Cal. 549; s. c., 29 Pac. Rep. 126. Action for assessments exceeding ten per cent. of stock; burden of proof; presumption. *Fruit Co. v. Coon*, 107 Cal. 447; s. c., 40 Pac. Rep. 542.]

§ 333. No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been

exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment;

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of either the first, second, or third subdivision of section three hundred and thirty-two.

[Section referred to and applied. *R. R. Co. v. Spreckles*, 65 Cal. 194; s. c., 3 Pac. Rep. 661, 802.]

§ 334. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

§ 335. Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment shall remain unpaid on the (day fixed), will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, and location of office.)

[Assessment upon subscribed stock; statutory form of notice. *San Joaquin, etc., Co. v. Beecher*, 101 Cal. 70; s. c., 35 Pac. Rep. 349.]

§ 336. The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a State or Territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as

the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county. (In effect July 1, 1874.)

§ 337. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice.—There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount.) And in accordance with law (and an order of the board of directors, made on the [date], if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

[Under above section, board of directors may order notice of sale of corporate stock for non-payment of assessment to be published in a newspaper other than that in which notice of assessment appeared. *H. & A. Works v. Houser*, 41 Pac. Rep. 809.]

§ 338. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

§ 339. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

§ 340. By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

§ 341. On the day, at the place, and at the time appointed in the notice of sale, the

## Assessments of stock, Civ. C., §§ 342-349.

secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

§ 342. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock-books of the corporation, on the payment of the assessment and costs.

§ 343. If, at the sale of stock, no bidder offers the amount of the assessments, and costs, and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

[The presumption is that the corporation has none of its stock to sell. *Manf. Co. v. Schafer*, 57 Cal. 396. Purchase by a banking corporation of shares of its stock, though ultra vires, does not extinguish the stock. Effect of such a transaction. *Bank v. Wickersham*, 99 Cal. 655; s. c., 34 Pac. Rep. 444.]

§ 344. All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

[The stock purchased by a corporation under this section, at a sale for delinquent assessments, is held subject to control of stockholders, and cannot be levied on under an execution against the corporation. *Robinson v. Mining Co.*, 72 Cal. 32; s. c., 13 Pac. Rep. 65.]

§ 345. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for

the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

§ 346. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew.

[An injunction will not issue to restrain the sale of stock to satisfy a valid assessment thereon which had become delinquent, merely because the notice of the sale was published for an insufficient length of time, unless the stockholder has paid, or offered to pay, the amount of the assessment. *Burham v. Manf. Co.*, 76 Cal. 26; s. c., 17 Pac. Rep. 939.]

§ 347. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

§ 348. The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof. (In effect July 1, 1874.)

§ 349. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

[This section does not create, and was not intended to create, any personal liability for as-

assessments, unless from the terms of the subscription such liability was incurred. In re Mining Co., 7 Saw. 30; s. c., 8 Id. 366.

Power of directors to waive proceedings under above section, for sale of stock for nonpayment of assessments and sue to recover the assessment. Inv. Co. v. Merrill, 41 Pac. Rep. 487.]

### CHAPTER III.

#### Corporate Powers.

- Art. I. General powers.  
 11. Records.  
 111. Examination of corporations.  
 IV. Judgment against and sale of corporate property.

#### ARTICLE I. GENERAL POWERS.

- Sec. 354. Powers of corporations.  
 355. Limitation of powers.  
 356. Banking expressly prohibited.  
 357. Misnomer does not invalidate instrument.  
 358. Corporation to organize within one year.  
 359. Increasing and diminishing capital stock, how.  
 360. Corporations may acquire real property, and how much.  
 361. Consolidation of mining corporations.  
 362. Articles of incorporation, how amended.  
 363. Corporations to own property.  
 363. Correction of erroneous filing of corporation.

§ 354. Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited; and when no period is limited, perpetually.

Code limit, fifty years. C. C., § 290.

[A corporation is recognized in law only by its corporate name. Curtiss v. Murry, 26 Cal. 633.]

2. To sue and be sued, in any court.

Place where corporation may be sued. Const., art. XII, § 16. Judgment against and sale of corporate property. C. C., §§ 388-393. Service of summons. C. P. P., §§ 411, 412. Verification of pleading. Id., § 446. Receivers. Id., §§ 564 et seq. Actions for usurpations. Id., §§ 803 et seq. Criminal proceedings against corporation. Pen. C., §§ 1390-1397. Existence of corporation cannot be questioned in private suit. § 358.

[A corporation must be sued by its corporate name. Curtiss v. Murry, 26 Cal. 633. If several persons associate and form a corporation, they cannot be sued as individuals for debts of the corporation. Id. If the president of the corporation signs, as president, a paper stating that person named therein has credit for a given sum for work done for corporation, the instrument itself does not constitute a cause of action against corporation or against persons composing it. Id. The right of a member of an incorporated company to sue a corporation is undoubted. Earnstead v. Mining Co., 5 Cal. 299; Culbertson v. Washburn & Co., 4 McLean, 547. When corporation, on a proper demand from a stockholder, refuses to institute action, stockholders may sue in their own names. Cogswell v. Bull, 39 Cal. 320. In an action by a stockholder in such cases, it is necessary to aver a demand and a refusal, without which the action will not be sustained. Id. General rule is, that an action against trustees for misappropriation of funds must be brought in name of corporation. Id. In an action against trustees, an averment in complaint that the board is composed "nearly, if not entirely," of same persons who committed

the wrong complained of, presents no issuable fact, and is, therefore, bad pleading. Id. Right of stockholder to redeem corporate property which has been sold under execution. Wright v. Mining Co., 40 Cal. 20.

A corporation whose original and only business is that of mining by the hydraulic process, and of selling water to others to be used for like purpose, may be temporarily enjoined upon an ex parte application without notice to it from depository discharging its mining debris in certain streams, or from selling its water to others to be used for purpose of producing a like result. Canal Co. v. Superior Ct., 66 Cal. 311; s. c., 5 Pac. Rep. 490.

Mortgagor of property who has dealt with mortgagor as a corporation, estopped to deny its corporate capacity in action to foreclose the mortgage. Bank v. Boyd, 30 Cal. 604; s. c., 34 Pac. Rep. 337.

Defense of ultra vires by a corporation is looked upon with disfavor by courts. Kennedy v. Bank, 101 Cal. 435; s. c., 35 Pac. Rep. 1039.

An averment of existence of de facto corporation is as issuable as an averment of the existence of a corporation de jure. Martin v. Deetz, 102 Cal. 55; s. c., 36 Pac. Rep. 368.

In an action by stockholder, on behalf of himself and other stockholders, for damages for injury to corporation, and for an accounting, a finding, with admission of plaintiff, that a demand upon the corporation to bring the action and its refusal to do so were simulated, and not in good faith, negative right of plaintiff to maintain the action. Morrison v. Stone, 103 Cal. 94; s. c., 37 Pac. Rep. 142.

Fact that judge is a first cousin by marriage to a stockholder does not disqualify him to decide a case in which the corporation is interested. Robinson v. S. P. Co., 105 Cal. 526; s. c., 38 Pac. Rep. 94, 722.]

3. To make and use a common seal, and alter the same at pleasure.

[A conveyance of real property by a corporation must be under its corporate seal. It may alter its seal at pleasure, and may adopt as its own the private seal of an individual, but in latter case the seal adopted must be used as that of the corporation. Richardson v. W. & M. Co., 22 Cal. 150. If to a deed, purporting to be that of the corporation, a seal be affixed as that of the individual agent who signs it, such seal cannot be treated as that of the corporation. A declaration in the instrument that the seal is affixed as that of the agent is conclusive of its character and effect. Id. It is not necessary to state in the conveyance by the corporation that the seal used is that of the corporation. This fact may, in the absence of any declaration to the contrary, be presumed from the language of the conveyance or proved by evidence aliunde. Id. When common seal of corporation is affixed to an instrument in writing, purporting to be executed by it, and signatures of proper officers are affixed to it and proved, courts will presume that officers did not exceed their authority, and the seal itself is prima facie evidence that it was affixed by proper authority. Association v. Bustamente, 52 Cal. 192. It is well settled in the United States, contrary to the common law doctrine, that a corporation may make a contract without a seal. Bank v. Patterson, 7 Cranch, 299; Fleckner v. Bank, 8 Wheat. 238; 12 Cal. 64. And that corporations may appoint agents by resolution or vote without corporate seal. Oshorn v. Bank, 9 Wheat. 738. A deed, without the corporate seal, purporting to have been executed on behalf of a corporation by its board of trustees, is inadmissible as evidence without first showing their authority to execute the same. The recital of such authority in the deed is not evidence. Gashwiler v. Willis, 33 Cal. 11. Whether this rule would be different when the regularly adopted corporate seal is shown by competent proof to be affixed to deed, not decided. Id.

One claiming under a quitclaim deed, without a seal executed by a corporation, need not show that it was executed under order of directors, unless actual fraud is shown. Fudickar v. Irr. Dist., 41 Pac. Rep. 1024.]



4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited in this part.

Eminent domain. Const., art. I, § 14; art. XII, § 8. Real estate not to be held more than five years. Id., § 9. How much may be acquired. C. C., § 360. Articles must be filed in counties where property is owned. C. C., § 299.

[Ownership of property is not essential to existence of a corporation, nor is corporation dissolved by sale of its property. *Sullivan v. Mining Co.*, 39 Cal. 459. A corporation may sell all its property for a corporate or lawful purpose. And the power to sell and convey is as broad as the power to purchase and hold, and is granted on the same terms. *Ditch Co. v. Zellerbach*, 27 Cal. 588; *Peo. v. College*, 28 id. 166. Power to sell and convey corporate property can be conferred only by the board of trustees assembled and acting as such. The board may confer this power upon themselves as individual trustees, or upon any other person or persons. *Gashwiler v. Willis*, 33 Cal. 12. The president, as such, has no authority to buy or sell real estate in the corporate name. *Bliss v. C. & L. Co.*, 3 West Coast Rep. 571.

Where a conveyance purporting to be executed by a corporation bears corporate seal apparently affixed by the custodian thereof, and signatures of officers are proved, the presumption is that such conveyance was executed by regular and proper authority. *McCracken v. San Francisco*, 16 Cal. 633; *Ditch Co. v. Zellerbach*, 27 id. 543, 548.

It must be presumed, as against third parties, that a corporation had power to purchase and hold land conveyed by deed. *Bank v. Staples*, 98 Cal. 189; s. c., 32 Pac. Rep. 936.

Dedication by railroad company of a portion of its land as a highway for public use is not ultra vires. *Peo. v. R. R. Co.*, 98 Cal. 665; s. c., 33 Pac. Rep. 728.

If grantor of a deed is in fact a corporation and the corporate seal is affixed thereto, a statement in the deed that it is incorporated is not essential. *L. & W. Co. v. Swartz*, 99 Cal. 278; s. c., 33 Pac. Rep. 878.

President, being empowered to do a general business for the corporation, may lease premises for its use, and bind it for rent under provisions of the lease. *Hawley v. Paving Co.*, 106 Cal. 337; s. c., 33 Pac. Rep. 649.

Domestic corporation, having expressly assumed a mortgage of a foreign corporation, is estopped to deny its validity. *Alford v. Gold Co.*, 106 Cal. 547; s. c., 40 Pac. Rep. 27.]

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.

[The authority of an agent to make a contract may be inferred from his admitted relations to the corporation, or from its course of business. *Crowley v. Mining Co.*, 55 Cal. 273; *Pixley v. R. R. Co.*, 33 id. 192. Appointment of an agent may be either by previous authority, or by subsequent ratification by the corporation. *Forbes v. Turnpike Co.*, 50 Cal. 340; *Seely v. San Jose, etc., Co.*, 59 id. 22; *Pixley v. R. R. Co.*, supra. But contracts of agents cannot be ratified if they are such as could not originally have been authorized. *Pixley v. R. R. Co.*, 33 Cal. 183; *Wallace v. San Jose*, 29 id. 180. Corporate existence must precede appointment of agent. *Kelly v. Ruble*, 3 West Coast Rep. 737. A corporation must act through officers and agents, and what it may do itself it may do through them. *McKiernan v. Lenzen*, 56 Cal. 61. Power of president of corporation to carry on its business and manage its finance. *Seely v. San Jose, etc., Co.*, 59 Cal. 22. President of a corporation, who is also a stockholder is, in absence of any usage of the company to the

contrary, entitled to compensation for his services as president. If rate is not fixed by contract, he is entitled to what his services are reasonably worth. *Rosborough v. Canal Co.*, 22 Cal. 556. Where officer is elected for one year, with compensation at a certain sum per month, statute of limitations does not begin to run against any portion of his claim for salary until end of year. Id. In an action by director to recover on quantum meruit for services rendered, a by-law of company providing that directors should receive no compensation for services as such, except expenses, was relevant and admissible in evidence. *Barstow v. R. R. Co.*, 42 Cal. 465. Director allowed to recover for services as superintendent. *Neall v. Hill*, 16 Cal. 145. Officers and agents, not directors, are entitled to recover on a quantum meruit, where no price is stipulated. *Fraylor v. Mining Co.*, 17 Cal. 591; *Bee v. R. R. Co.*, 46 id. 218. The power of removal of private or ministerial officers of a private corporation belongs to the corporation alone. Courts cannot remove such officers. *Neall v. Hill*, 16 Cal. 145. The aid of courts can be invoked only as against such officers as are intrusted with management of affairs of the corporation, and as against these, the remedy is in law and not in equity. Id.

Private corporations, with regard to appointment of agents and making contracts, are upon same footing as natural persons, unless limited to some particular mode by their charter. *Carey v. Petroleum Co.*, 33 Cal. 696.

Fraudulent concealment by bookkeeper binding upon corporation. *Stockton, etc., Works v. Ins. Co.*, 98 Cal. 557; s. c., 33 Pac. Rep. 633.

Extra compensation allowed to secretary, presumption that he performed extra services. *Zellerbach v. Allenberg*, 39 Cal. 57; s. c., 33 Pac. Rep. 786.

Powers of general managing agent. *Greig v. Riordan*, 99 Cal. 316; s. c., 33 Pac. Rep. 913.]

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

See C. C., § 391, note.

[Transfer of shares of capital stock of a corporation by owner thereof to a bona fide purchaser for value, vests title in such transferee free of equities between seller and the corporation of which purchaser was ignorant at time of transfer, though provided for by a by-law of the corporation. Existence of such by-law is not enough to charge purchaser with notice. Power of corporations to make by-laws for transfer of their stock does not include power to create liens thereon, affecting purchasers for value without notice. *Bank v. Bank*, 63 Cal. 359.]

7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments.

See C. C., §§ 331 et seq.

8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

See subd. 4, ante, as to real estate contracts.

[Corporations may borrow money to carry on business for which they were created, and issue the usual evidence of debt therefor, although such right is not expressly reserved by charter. *Magee v. Mining Co.*, 5 Cal. 258; *Seely v. San Jose, etc., Co.*, 59 id. 22. In an execution of a note or other obligation, if it appears from the entire instrument that it was the intention to make it an obligation of the corporation, it is such, and not an individual obligation. *Smith v. Flour Mills Co.*, 6 Cal. 1; *Haskell v. Cornish*, 13 id. 45; *Shaver v. Mining Co.*, 21 id. 45; *Blanchard v. Kaulf.*, 44

## General powers, Civ. C.: §§ 355-359.

Id. 440; *Bank v. Colby*, 61 id. 352; s. c., 28 Pac. Rep. 118. A corporation may enter into a contract of guaranty. *Low v. R. R.*, 52 Cal. 53. And may make an assignment. *McKernan v. Leuzen*, 56 Cal. 61.

The entering into the contract by a corporation is a determination on its part that it was essential within this section. *Bates v. Beach Co.*, 41 Pac. Rep. 855.

Promissory notes executed by secretary without authority of directors, not binding on corporation. *Pauly v. Pauly*, 107 Cal. 8; s. c., 40 Pac. Rep. 29.

A corporation must account for benefits received under an ultra vires contract, without interest on the amount found due. *Fruit Co. v. Coon*, 107 Cal. 447; s. c., 40 Pac. Rep. 542.

Fact that town corporations have same directors does not prevent them from being different corporations, with right to contract with each other. Id.]

**[Powers in general.]** Corporations are bound to follow strictly the letter of their by-laws, and can exercise no power, unless granted to them, or absolutely necessary to carry out the power so granted. *Smith v. Morse*, 2 Cal. 524; *Smith v. Flour Mills Co.*, 6 id. 1; *Neall v. Hill*, 16 id. 145; *Argenti v. San Francisco*, id. 255; *Ditch Co. v. Zellerbach*, 37 id. 543; *Poo v. College*, 38 id. 166; *Vandall v. Dock Co.*, 40 id. 83; *Turnpike Co. v. Hill*, 96 U. S. 63; *Huntington v. Bank*, id. 388; *Fertilizing Co. v. Hyde Park*, 97 id. 666. Mode of exercising expressed powers is determined by statute; incidental powers may be exercised by officers and agents. *Smith v. Flour Mills Co.*, 6 Cal. 1; *Water Co. v. Flaming Co.*, 22 id. 629; *Carey v. Petroleum Co.*, 33 id. 696. One corporation may take stock in another. *Evans v. Bailey*, 4 West Coast Rep. 427. General subject of ultra vires discussed. *Ditch Co. v. Zellerbach*, supra. One railroad corporation has power, upon a sufficient consideration, to guarantee payment of bonds of another. *Low v. R. R. Co.*, 52 Cal. 53. A corporation has capacity to enter into any obligation or contract essential for its purpose, and for the transaction of its ordinary affairs; and, where power to contract exists, it may be exercised by the corporation or its agents, in the same way as a natural person can contract, unless restrained by charter to some particular mode of contracting. *McKernan v. Leuzen*, 56 Cal. 61. Powers in general of corporations discussed. *Water-Works v. Schottler*, 62 Cal. 104. Section 304 construed. *Underhill v. Santa Barbara, etc., Co.*, 93 Cal. 309; s. c., 28 Pac. Rep. 1049.

An assignment of an account due to a corporation is sufficient if made by secretary or managing agent with general authority. *Tuller v. Arnold*, 98 Cal. 522; s. c., 33 Pac. Rep. 445.

Corporation which engages in business of inn-keeping cannot plead that its acts as such are ultra vires. *Mace v. Improv. Co.*, 98 Cal. 678; s. c., 33 Pac. Rep. 772.

Purchase by a banking corporation of shares of its capital stock, though ultra vires, does not extinguish the stock. Effect of such a transaction. *Bank v. Wickersham*, 99 Cal. 655; s. c., 34 Pac. Rep. 444. National bank may take shares in any corporation as collateral security. *Kennedy v. Bank*, 101 Cal. 495; s. c., 35 Pac. Rep. 1039. Defense of ultra vires by a corporation is looked upon with disfavor by courts. Id.

Lease of municipal franchise for electric light and gas purposes to third party held to be ultra vires and void as against public policy. *Light Co. v. Shus*, 104 Cal. 326; s. c., 37 Pac. Rep. 1042.

President has authority to employ an attorney for the corporation. *Streeten v. Robinson*, 102 Cal. 512; s. c., 36 Pac. Rep. 946. Under certain circumstances, a physician. *Fraser v. Bridge Co.*, 103 Cal. 79; s. c., 36 Cal. 1037.

One private corporation has no implied authority to invest in shares of another. *Knowles v. Sanderecock*, 107 Cal. 629; s. c., 40 Pac. Rep. 111.]

§ 355. In addition to the powers enumerated in the preceding section, and to those expressly given in that title of this part under which it is incorporated, no corporation shall possess or exercise any corporate pow-

ers, except such as are necessary to the exercise of the powers so enumerated and given.

[Section construed. *Water-Works v. Schottler*, 62 Cal. 104.]

§ 356. No corporation shall create or issue bills, notes, or other evidences of debt, upon loans or otherwise, for circulation as money.

Violation of this section is a crime. Const., art. XII, § 5; Pen. C., § 648. But corporation may execute negotiable instruments. § 354 (8), note.

§ 357. The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

[Misnomer of corporation in an indictment; when not a fatal variance. *Poo v. Potter*, 35 Cal. 110. An assessment against a corporation is not invalid because of a slight discrepancy in the corporate name on the assessment-roll. *Poo v. Mining Co.*, 39 Cal. 511. Section applied and construed. *Underhill v. Santa Barbara, etc., Co.*, 93 Cal. 314; s. c., 28 Pac. Rep. 1049.]

§ 358. If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the State on information of the attorney-general.

See § 354 (2), note.

Street railway companies must commence in one year; railroads in two years.

[Question discussed as to what is the commencement of transaction of corporate business within one year from time of filing certificate. *Poo v. R. R. Co.*, 45 Cal. 306. If a franchise is granted to construct a street railroad within a certain time, with condition that if provisions of act are not complied with franchise shall be forfeited, failure to lay tracks within time limited works forfeiture of the right without a judgment at suit of State declaring forfeiture, and legislature may confer the franchise upon any other company or person. *R. R. Co. v. R. R. Co.*, 45 Cal. 365. An inquiry as to right of company to act as a corporation can only be had at suit of State on information by attorney-general. *Rondell v. Fay*, 32 Cal. 354. The irregularity or non-performance of acts relating to organization of corporation can only be investigated in a direct proceeding instituted by State for that purpose and not in a collateral action. *Water-Works v. San Francisco*, 22 Cal. 441. Above section applied. *Road Co. v. Supervisors*, 61 Cal. 69; s. c., 28 Pac. Rep. 496; *Poo v. Stanford*, 77 Cal. 372; s. c., 18 Pac. Rep. 85; 19 id. 693; *Ditch Co. v. Crane*, 80 Cal. 186; s. c., 22 Pac. Rep. 76; *M. & M. Co. v. Mach. Works*, 82 Cal. 186; s. c., 23 Pac. Rep. 45.]

§ 359. (As amended March 23, 1893.) No corporation shall issue stocks or bonds except for money paid, labor done, or property

Increase or decrease of stock; real estate, Civ. C., §§ 360, 361.

actually received, and all fictitious increase of stock or indebtedness is void. Every corporation may increase or diminish its capital stock, create or increase its bonded indebtedness, subject to the following provisions:

First. The capital stock of a corporation may be increased or diminished at a meeting of the stockholders by a vote representing at least two-thirds of the subscribed capital stock; such meeting must be called by the board of directors, and notice must be given by publication in a newspaper published in the county where the principal place of business of such corporation is located, or if there be none published in said county, then in a newspaper published in an adjoining county, such paper to be designated by the board of directors in the order calling the meeting.

Second. The notice must specify the object of the meeting, and the amount to which it is proposed to increase or diminish the capital stock, the time and place of holding the meeting, which latter must be at the principal place of business of the corporation, and at the building where the board of directors usually meet. The notice herein provided must be published once a week for at least sixty days. The capital stock cannot be diminished to an amount less than the indebtedness of the corporation.

Third. The bonded indebtedness of a corporation may be created or increased by a vote of the stockholders representing at least two-thirds of the subscribed capital stock at a meeting called by the board of directors, and after notice of the time and place of the meeting, published in the same manner and for the time above prescribed, which notice shall state the amount of the bonded indebtedness which it is proposed to create, or the amount to which it is proposed to increase such indebtedness, and shall in all other respects contain the same matters as are above provided and set forth in the notice of a meeting to increase or diminish the capital stock.

Fourth. In addition to the notice by publication, the secretary of the corporation shall also address a notice to each of the stockholders whose name appears on the company's books as sufficiently addressed at his place of residence if known, and if not known, then at the principal place of business of the corporation, which notice shall be mailed to such stockholders at least thirty days before the day appointed for such meeting.

And upon such increase or diminution of the capital stock or creation or increase of bonded indebtedness being made as herein provided, a certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, or the amount of the bonded indebtedness created or to which the bonded indebtedness may have been increased, and the amount of

stock represented at the meeting, and the whole vote by which the object was accomplished. The certificate must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof in the office of the secretary of State; and thereupon the capital stock shall be so increased or diminished, or the bonded indebtedness may be created or increased accordingly. When the by-laws of the corporation prescribe the paper in which notice of meeting is to be published, the notices herein provided for shall be published in such paper, unless publication thereof shall have ceased.

Above section before amended was annulled as being in conflict with Const., art. XII, § 11. *Ewing v. Mining*, 59 Cal. 649.

[By the capital stock, the statute intends the capital of the corporation on which it transacts business, whether such capital consists of money, property or other valuable commodities. In no other sense could the terms "capital stock of the company," as employed in this section, have any significance. *Martin v. Zellerbach*, 38 Cal. 360. An increase of capital stock of a corporation, and the issuing of additional shares, to be sold at a price less than the nominal par value of the stock, to supply a fund actually required for the use of the corporation, is not a "fictitious increase of stock," within meaning of art. XII, § 11 of the Constitution. *Stein v. How*, 65 Cal. 616; *s. c.*, 4 Pac. Rep. 662.

This section must be construed as rendering void certificate of stock issued upon credit, and not as rendering void a condition as to the payment of a non-negotiable note given therefor. *Jefferson v. Hewitt*, 193 Cal. 624; *s. c.*, 37 Pac. Rep. 638.

Persons receiving stock in violation of above section do not become stockholders. *Kellerman v. Maire*, 48 Pac. Rep. 377.]

§ 360. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property, as provided in title VII, part III, Code of Civil Procedure, when needed for any of the uses and purposes mentioned in said title (sections 1237-1263). (In effect July 1, 1874.)

Right of eminent domain. Const., art. I, § 14; art. XII, § 8. Property not to be held more than five years. Id., § 9. Power to hold property. C. C., § 354 (4). ( §§ 1237-1263, C. C. P., relate to condemnation proceedings and are omitted.) Articles to be filed where corporation owns property. C. C., § 299.

[The power of a corporation by the law under which it is created, to purchase a particular character of property cannot be questioned in an action between it and another corporation or person. It is a question between the corporation and the State, to be determined in a proceeding by the latter for a forfeiture. *Telegraph Co. v. Telegraph Co.*, 22 Cal. 398; *Water Co. v. Fluming Co.*, id. 621; *Mining Co. v. Clarkin*, 11 id. 545. A corporation has no more right to purchase an equitable estate for an unauthorized purpose, than to purchase a legal estate for the same purpose. *Coleman v. San Rafael, etc., Co.*, 49 Cal. 517.]

§ 361. It shall be lawful for two or more corporations formed, or that may hereafter

Consolidation of mining corporations; amendment of articles, Civ. C., §§ 362, 363.

be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises in such manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such companies so desiring to consolidate their interests; but no such consolidation shall take place without the written consent of the stockholders representing two-thirds of the capital stock of each company; and no such consolidation shall in any way relieve such companies, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same shall be given by advertising for one month in at least one newspaper in the county and State where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county, or city and county, where the principal place of business of any of said companies shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, shall be filed in the office of the county clerk of the county in which the original certificate of incorporation of any of said companies shall be filed, and a copy thereof shall be filed in the office of the secretary of State. Such certificate shall be signed by a majority of each board of trustees or directors of the original companies; and it shall be their duty to call within thirty days after the filing of such certificate, and after at least ten days' public notice, a meeting of the stockholders of all of said companies so consolidated, to elect a board of trustees or directors for the consolidated company for the year thence next ensuing. The said certificate shall also contain all the requirements prescribed by section two hundred and ninety of said Civil Code.

This act shall apply to all corporations formed under the laws of this State, whether formed under the said Civil Code, or prior thereto. (In effect March 20, 1876.)

§ 362. (As amended March 11, 1893.) Any corporation may amend its articles of association or certificate of incorporation by a majority vote of its board of directors or trustees, and by a vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock of such corporation, and a copy of the said articles of association or certificate of incorporation, as thus amended, duly certified to be correct by the president and secretary of the board of directors or trustees of such corporation, shall be filed in the office or offices where the original or certificate of incorporation are required by this Code to be filed; and from the time of so filing such copy of the amended articles of association or certificate of incorporation, such corporation shall have the same powers, and it and

the stockholders thereof shall thereafter be subject to the same liabilities as if such amendment had been embraced in the original articles or certificate of incorporation; Provided, That the time of the existence of such corporation shall not be by such amendment extended beyond the time fixed in the original articles or certificate of incorporation; Provided further, That such original and amended articles or certificate of incorporation shall together contain all the matters and things required under which the original articles of association or certificate of incorporation were executed and filed; And provided further, That nothing herein contained shall be construed to cure or amend any defect existing in any original certificate of incorporation heretofore filed, by reason that such certificate does not set forth the matters required to make the same valid as a certificate of incorporation at the time of its filing; And also provided, That if the assent of two-thirds of the said stockholders to such amendment has not been obtained, that a notice of the intention to make the amendment shall first be advertised for thirty (30) days in some newspaper published in the town or county, or city and county, in which the principal place of business of the association or corporation is located, before the filing of the proposed amendment; And provided also, That nothing in this section shall be construed to authorize any corporation to diminish its capital stock.

§ 363. By a unanimous vote of all the directors at any regular meeting, any corporation existing or hereafter to be formed under the laws of this State, may acquire and hold the lots and building on and in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business.

§ 2. This act shall take effect immediately. (Approved March 5, 1889.)

§ 363. When articles of incorporation have been prepared, subscribed, and executed in accordance with the provisions of sections two hundred and ninety and two hundred and ninety-two of the Civil Code, and such original articles filed by error or inadvertence with the clerk of a county other than that named in the articles of incorporation as the county in which the principal place of business is to be transacted, and the secretary of State shall have issued a certificate of incorporation based on a certified copy of such original articles of incorporation, any stockholder or director of such corporation may petition the superior court of the county in which said original articles of incorporation were filed for an order to withdraw such original articles of incorporation, and file in place thereof a certified copy of the copy thereof on file in the office of the secretary of State. Such petition must be verified, and must state clearly the facts, showing that such articles of incorporation were filed by inadvertence and mistake; and notice

## Records; examination of corporations, Civ. C., §§ 377, 378, 382, 383.

of the hearing of said petition must be given for at least ten days before the day of hearing, by publication in a newspaper published in the county where such petition is filed. Upon the day set for hearing the petition the superior court may grant an order allowing such original articles of incorporation to be withdrawn, and a certified copy of the copy in the office of the secretary of State in the place thereof filed; and the original articles of incorporation must be filed within ten days thereafter in the county in which the principal place of business is to be transacted, as stated in such articles of incorporation, and a certified copy of the order allowing such action must be filed with the certified copy in the office of the secretary of State, after which said corporation shall be entitled to all rights and privileges of a private corporation, and the title to any property it may have previously acquired shall not be affected by reason of the failure to file the original articles of incorporation in the first instance.

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect immediately. (Approved March 19, 1889.)

## ARTICLE II. RECORDS.

Sec. 377. Records — of what, and how kept.

378. Other records to be kept by corporations for profit, and others.

§ 377. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full — all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

See Const., art. XII, § 14; Pen. C., §§ 565, 569. Legislature may examine records. C. C., § 383. Banking corporation must keep certain records. C. C., § 321.

[The acts of directors of a corporation, ordered to be entered of record, but which secretary, by neglect or mistake, does not enter, may be proved by parol testimony. *Homestead Assn. v. Williams*, 50 Cal. 353. Also, if corporation, for reasons deemed sufficient by it, postpones formal entry of acts of board of directors, they may be proved by parol testimony. *Id.* A corporation may introduce parol evidence to show that a resolution of its board of trustees spread upon the minutes of its proceedings, does not express

correctly the proposition which was voted by the board. *Mining Co. v. Gilson*, 51 Cal. 341. A vote of board of directors may be presumed from its acts, though there is no proof of such vote on the corporate record. *Pixley v. R. R. Co.*, 33 Cal. 184. Refusal to allow a stockholder to inspect its account-books not sufficient to entitle him to maintain an action for dissolution of the corporation. *Burham v. Manf. Co.*, 76 Cal. 24; s. c., 17 Pac. Rep. 940. Transactions of board of directors should be recorded. *Mining Co. v. Mining Co.*, 78 Cal. 633; s. c., 21 Pac. Rep. 373. Section applied. *Salfield v. L. L. & R. Co.*, 94 Cal. 519; s. c., 20 Pac. Rep. 1105.]

§ 378. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor.

See preceding section and notes.

## ARTICLE III. EXAMINATION OF CORPORATIONS, ETC.

Sec. 382. Examination into affairs of corporations, how made by officers of State.

383. Examination made by the legislature.

384. Chapter and article may be repealed.

§ 382. The attorney-general or district attorney, whenever and as often as required by the governor, must examine into the affairs and condition of any corporation in this State, and report such examination, in writing, together with a detailed statement of facts, to the governor, who must lay the same before the legislature; and for that purpose the attorney-general or district attorney may administer all necessary oaths to the directors and officers of any corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the books, papers, and documents belonging to such corporation, or appertaining to its affairs and condition.

See Pen. C., § 565.

[Section referred to. *Peo. v. Savings Soc.*, 72 Cal. 23; s. c., 13 Pac. Rep. 48.]

§ 383. The legislature, or either branch thereof, may examine into the affairs and condition of any corporation in this State at all times; and, for that purpose, any committee appointed by the legislature, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may

examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe.

See Const., art. XII, § 14; C. C., §§ 377, 378; Pen. C., § 565. Banking corporation to keep certain records. C. C., § 321.

§ 384. The legislature may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

See Const., art. XII, § 1. Voluntary dissolution. C. C. P., §§ 1227-1233.

#### ARTICLE IV. JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY.

Sec. 388. Franchise may be treated as property, and sold under execution.

389. Purchaser to transact business of corporation.

390. Purchaser may recover penalties, etc.

391. Corporation to retain powers after sale.

392. Redemption of franchise.

393. When proceedings under execution may be had.

§ 388. (As amended February 23, 1897.) For the satisfaction of any judgment against any person, company, or corporation authorized to receive tolls, the franchise and all the rights and privileges thereof may be levied upon and sold under execution, in the same manner, and with the same effect, as any other property. (In effect July 1, 1874.)

[The franchises of a corporation are privileges granted and held in personal trust, and cannot be transferred by forced sale, or by voluntary assignment, except by permission of the government, and when that permission is granted, the mode of transfer pointed out must be followed. *Wood v. Turnpike Co.*, 24 Cal. 474; *Thomas v. Armstrong*, 7 id. 286; *Munroe v. Thomas*, 5 id. 470. Question of validity of transfer of a corporation's franchise concerns the public alone. *R. R. Co. v. R. R. Co.*, 45 Cal. 265. Corporation is a necessary party defendant to action which seeks to enforce its judgment by sale of corporate franchises. *Bracia v. Nelson*, 42 id. 107. A franchise of a wagon road may be sold on execution. *Welsh v. County*, 80 Cal. 341; s. c., 22 Pac. Rep. 254. Above section applied. *S. P. Co. v. Burr*, 86 Cal. 283; s. c., 24 Pac. Rep. 1022.]

§ 389. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the

exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same, as hereinafter provided.

§ 390. The purchaser, or his assignee, is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages, or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or in behalf of the corporation for the same.

[See *Munroe v. Thomas*, 5 Cal. 470; *Thomas v. Armstrong*, 7 id. 286; *Wood v. Turnpike Co.*, 24 id. 487.]

§ 391. The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

§ 392. The corporation may, at any time within one year after such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum paid therefor, with ten per cent. interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

§ 393. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid, is situated. (In effect July 1, 1874.)

#### CHAPTER IV.

##### Extension and Dissolution of Corporation.

Sec. 399. Proceedings to disincorporate.

400. On dissolution, directors to be trustees for creditors.

401. Any corporation may extend its corporate existence, how.

402. How corporations may continue their existence. (Repealed.)

403. Title 1 to apply to all corporations with certain exceptions.

§ 399. The dissolution of corporations is provided for:

1. If involuntary — in chapter V, of title X, part II, of the Code of Civil Procedure. (Sections 802-810.)

2. If voluntary — in title VI, part III, of the Code of Civil Procedure. (Sections 1227-1233.)

§ 400. Unless other persons are appointed by the court, the directors or managers of

the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation.

[Power recognized in this section does not authorize court to take upon itself power to settle affairs of a corporation or to appoint a receiver for that purpose. *Ins. Co. v. Superior Ct.*, 101 Cal. 135; s. c., 35 Pac. Rep. 549.  
Two foregoing sections referred to. *Havemeyer v. Superior Ct.*, 84 Cal. 358, 365; s. c., 24 Pac. Rep. 121.]

§ 401. Every corporation formed for a period less than fifty years may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members, called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock; or by two-thirds of the members; or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, shall be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk, where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of State, and thereupon the term of the corporation shall be extended for the specified period. (In effect July 1, 1874.)

See Const., art. XII, § 7.

§ 402 of said Code is repealed. (In effect July 1, 1874.)

§ 403. The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto, inconsistent with some provision in this title, in which case the special provision prevails.

See following act.

## AN ACT RELATING TO FOREIGN CORPORATIONS.

Sec. 1. A resident must be designated upon whom process may be served.  
2. Penalty for failure to designate.  
3. Privileges on compliance.

Section 1. Every corporation heretofore created by the laws of any other State, and doing business in this State, shall, within one hundred and twenty days after the passage of this act, and any corporation hereafter created and doing business in this State, within sixty days from the time of commencing to do business in this State, designate some person residing in the county in which the principal place of busi-

ness of said corporation in this State is, upon whom process issued by authority of or under any law of this State may be served, and within the time aforesaid shall file such designation in the office of the secretary of State; and a copy of such designation, duly certified by such officer, shall be evidence of such appointment; and it shall be lawful to serve on such person so designated any process issued as aforesaid. Such service shall be made on such person in such manner as shall be prescribed in case of service required to be made on foreign corporations, and such service shall be deemed to be a valid service thereof.

§ 2. Every corporation created by the laws of any other State which shall fail to comply with the provisions of the first section of this statute, shall be denied the benefit of the statutes of this State limiting the time for the commencement of civil actions.

§ 3. Every corporation created by the laws of any other State which shall comply with the provisions of the first section of this statute, shall be entitled to the benefit of the statutes of this State limiting the time for the commencement of civil actions. (Approved April 1, 1872.)

Service of summons on foreign corporation. C. C. P., §§ 411, 412.

## Division Second. Part IV. Acquisition of Property.

### TITLE IV. TRANSFER.

#### CHAPTER IV.

##### ARTICLE II.

#### Acknowledgment of Instruments.

Sec. 1185. Requisites for acknowledgments.

1190. Form of acknowledgment by corporation.

§ 1185. The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, \* \* \* if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

§ 1190. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

State of ..... } ss :  
County of ..... }

On this ..... day of ..... in the year of ..... before me there insert the name and quality of the officer, personally appeared ..... known to me (or proved to me on the oath of ..... ) to be the president (or the secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

Service of summons on corporations, C. Civ. Pro., §§ 17, 411, 412.

## TITLE VI. WILLS.

### CHAPTER I.

#### Execution and Revocation of Wills.

Sec. 1275. Business corporations may not take property by will.

§ 1275. A testamentary disposition may be made to any person capable by law of tak-

ing the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes cannot take under a will, unless expressly authorized by statute.

See C. C., § 288, note.

[A school district can take by will. *Estate of Bulmer*, 39 Cal. 131.]

## CODE OF CIVIL PROCEDURE.

### Preliminary Provisions.

Sec. 17. "Person" to include a corporation.

§ 17. \* \* \* The word "person" includes a corporation, as well as a natural person; \* \* \*

See Pen. C., § 7. Term "corporation" includes what. Const., art. XII, § 4. Corporation defined. C. C., §§ 283, 284.

[The word "person," in its legal signification, is a generic term, and was intended to include artificial as well as natural persons. *Douglass v. Steamship Co.*, 4 Cal. 304. In the Political Code the word "person" includes corporate, as well as natural persons. *Water-Works v. Schottler*, 62 Cal. 116. The provision of the fourteenth amendment of the United States Constitution, that no State shall "deny to any person within its jurisdiction the equal protection of the laws," applies to natural persons only, and does not apply to corporations, or artificial persons. *R. R. Co. v. Board*, 60 Cal. 35. *Contra*, *Railroad Tax cases*, 8 Saw. 238. Section referred to and applied. *Peo. v. City*, 66 Cal. 289; s. c., 5 Pac. Rep. 350.]

### Part II. Civil Actions.

Title V. Manner of commencing.  
VII. Provisional remedies.

#### TITLE V. MANNER OF COMMENCING.

Sec. 411. Summons, upon whom served.  
412. Publication of summons, when.

§ 411. The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this State: to the president or other head of the corporation, secretary, cashier, or managing agent thereof;

2. If the suit is against a foreign corporation, or a non-resident joint-stock company or association, doing business and having a managing or business agent, cashier, or secretary within this State: to such agent, cashier, or secretary.

Power of corporation to sue and be sued. C. C., § 354 (2). May be sued where. Const., art. XII, § 16. Summons upon information or indictment of a corporation. Pen. C., §§ 1390-1397. See act relating to foreign corporations, at p. 35.

[In a suit against a corporation, the summons must be served on one of the officers or agents named in the Practice Act. *Aiken v. Mining Co.*, 6 Cal. 186. Sheriff's return on summons against a corporation, that he served the same on president and secretary of company, is prima facie evidence

that persons named in return were such officers. *Rowe v. Water Co.*, 10 Cal. 441. Service of summons upon president de jure of a corporation held to be valid, although he had ceased to act as such. Service upon the president de facto might also have been good. *Navy Co. v. Struver*, 41 Cal. 616. Return of sheriff showing that he had served summons "upon James Street, one of the proprietors of the company," held insufficient. It not appearing that Street was president, or head of the corporation, or secretary, cashier, or managing agent thereof. *O'Brien v. Canal Co.*, 10 Cal. 343. Service of summons on person designated by foreign corporation as one upon whom process might be served, is a sufficient service on the corporation, so long as such designation remains unrevoked, although service was made after adoption of this Code, and on a person who is neither an agent, cashier, secretary or any other officer of the corporation. *Canal Co. v. Superior Ct.*, 66 Cal. 341; s. c., 5 Pac. Rep. 490. Notice of appeal from a justice's court may be served on adverse party personally, notwithstanding he was represented by an attorney. And where adverse party is a corporation, service on its manager is sufficient to give the superior court jurisdiction. *Ry. Co. v. Superior Ct.*, 79 Cal. 103; s. c., 21 Pac. Rep. 609.]

§ 412. (As amended March 23, 1893.) Where the person on whom service is to be made \* \* \* is a foreign corporation having no managing or business agent, cashier, or secretary within the State, and the fact appears by affidavit to the satisfaction of the court or a judge thereof, and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, or when it appears by such affidavit, or by the complaint on file herein, that it is an action which relates to or the subject of which is real or personal property in this State, in which such person defendant or foreign corporation defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part in excluding such person or foreign corporation from any interest therein, such court or judge may make an order that the service be made by the publication of the summons.

Section 413 provides that publication must be made at least once a week for not less than two months. See § 749.

[This procedure is constitutional. *Etlet v. Foote*, 39 Cal. 439; *McCauley v. Fulton*, 44 id. 359. As to extent to which jurisdiction may be thus acquired, see *Pembrey v. Neff*, 95 U. S. 714; *Hart v. Sanson*, 110 id. 151. This section must be strictly construed. *Jordan v. Giblin*, 12 Cal. 100. Order



Pleading: attachment; receivers. C. Civ. Pro., §§ 446, 541, 542, 564-568.

for publication, sufficiency of. *Anderson v. Goff*, 72 Cal. 65; s. c., 13 Pac. Rep. 73. The fact that cause of action exists may be shown either by affidavit or by verified complaint on file. If complaint be not verified, the affidavit may refer to and adopt its statement. In such case, the oath to the affidavit is an affidavit to the contents of the document referred to and adopted. *Lizare v. R. K. Co.*, 76 Cal. 610; s. c., 18 Pac. Rep. 777. Requisites of the affidavit. *Id.*; *Furnish v. Mullan*, 76 Cal. 646; s. c., 18 Pac. Rep. 854; *Dunlap v. Steere*, 92 Cal. 345; s. c., 28 Pac. Rep. 563.]

## TITLE VI. PLEADINGS.

### CHAPTER VI.

#### Verification of.

Sec. 446. Verification by corporation.

§ 446. Every pleading must be subscribed by the party or his attorney; \* \* \* when a corporation is a party, the verification may be made by any officer thereof.

[What is sufficient verification by agent. *Newman v. Bird*, 60 Cal. 372. Question of defective verification cannot be raised by demurrer. *Seattle, etc., Co. v. Thomas*, 57 Cal. 197. If plaintiff goes to trial without objection for want of verification of the answer he cannot raise the question after decision is rendered against him. *San Francisco v. Itsell*, 80 Cal. 57; s. c., 22 Pac. Rep. 74.]

## TITLE VII. PROVISIONAL REMEDIES.

Ch. 4. Attachment.  
5. Receivers.

### CHAPTER IV.

#### Attachment.

Sec. 541. Shares of stock may be attached.  
542. Attachment, how made.

§ 541. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon, \* \* \* may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

§ 542. The sheriff to, whom the writ is directed and delivered, must execute the same without delay, and if the undertaking mentioned in section five hundred and forty be not given, as follows:

4. Stocks or shares, or interest in stocks or shares, of any corporation or company, must be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached, in pursuance of such writ.

## CHAPTER V.

### Receivers.

Sec. 564. Appointment of receiver.  
565. Appointment of receiver upon dissolution of corporation.  
568. Powers of receiver.

§ 564. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

[A court of equity has no jurisdiction over corporations, for purpose of restraining their operations or winding up their business. Such court may compel the officers of corporation to account for any breach of trust, but jurisdiction for this purpose is over officers personally, and not over the corporation. Hence, in this case, it was error in court below to appoint a receiver and decree a sale of the property and a settlement of affairs of the corporation. *Neall v. Hill*, 16 Cal. 146. Such decree necessarily results in a dissolution of corporation, and would be doing indirectly what the court has no power to do directly. *Id.* The general and ordinary jurisdiction of courts of equity does not embrace power to appoint receiver of property of a corporation in aid of a suit prosecuted against it by private persons, but such power, if it exists at all, must be derived from statute conferring it upon the court. The above section does not confer it. *French Bank Case*, 53 Cal. 495. Jurisdiction of superior court over estate of insolvent corporation. *Ins. Co. v. Superior Ct.*, 101 Cal. 135; s. c., 35 Pac. Rep. 549.]

§ 565. Upon the dissolution of any corporation, the superior court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

Involuntary dissolution of corporation. C. C. P., §§ 802 et seq. Voluntary dissolution. C. C. P., §§ 1227 et seq.

[Section construed. *Havenmeyer v. Superior Ct.*, 84 Cal. 366; s. c., 24 Pac. Rep. 121; *Ins. Co. v. Sup. Ct.*, 101 Cal. 135; s. c., 35 Pac. Rep. 549. A judgment against a corporation for usurping franchises does not dissolve it so as to allow appointment of a receiver under above section. *Yore v. Superior Ct.*, 41 Pac. Rep. 477.]

§ 568. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

[Section construed. *Denney v. Superior Ct.*, 81 Cal. 11; s. c., 21 Pac. Rep. 147. Functions and powers of receivers of corporations dissolved at length. *Ry. Co. v. Wade*, 91 Cal. 419; s. c., 27 Pac. Rep. 768. An action cannot be brought against a receiver without leave of the court, but service of an attachment is not bringing an action and property may, therefore, be attached and priority gained in hands of a receiver. *Adams v. Woods*, 9 Cal. 28; *Nazee v. Minturn*, 8 id. 540.]

Usurpation of franchises; voluntary dissolution, C. Civ. Pro., §§ 803-809, 1227.

## TITLE X. ACTIONS IN PARTICULAR CASES.

### CHAPTER V.

#### Actions for Usurpation of Franchises.

Sec. 803. Actions against party usurping franchises.

808. When several persons claim franchise.

809. If defendant found guilty, what judgment to be rendered.

§ 803. An action may be brought by the attorney-general, in the name of the people of this State, upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any \* \* \* franchise within this State. And the attorney-general must bring the action whenever he has reason to believe that any such \* \* \* franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor.

[The using of an abbreviated corporate name by officers of a corporation organized under particular name, is not an usurpation, nor will it support a proceeding by quo warranto to oust them from the enjoyment of their franchise. *Peo. v. Bogart*, 45 Cal. 73. When right to act as a corporation is denied, company claiming to be such must show that it claims in good faith to be a corporation under laws of this State, and is doing business as such corporation. *R. R. Co. v. Plumas Co.*, 37 Cal. 358. Pleadings in proceedings by quo warranto to try writ to exercise corporate powers. *Id.* In an action to enforce forfeiture of a corporate franchise on account of nonuser and misuser, complaint must specifically allege that defendant has a legal existence as a corporation. *Peo. v. Stanford*, 77 Cal. 360; s. c., 18 Pac. Rep. 85; 19 *Id.* 633. In an action to have it determined that certain persons are unlawfully claiming to be and are exercising functions of a private corporation had never had an existence, persons usurping franchise are the only proper defendants. If the corporation be made a defendant as such, its corporate existence is admitted. *Id.* In such an action, an answer which denies that individual defendants are claiming or exercising franchises, the answer states complete defense as to them. *Id.* If alleged usurpation is claimed to result from cessation of corporate existence, facts showing the termination of its existence must be set forth. And if claim be that organization was defective, facts showing the defects claimed to exist must be specifically alleged. *Id.* Judgment decreeing usurpation of franchise—nonexistence of corporation must be determined. *Id.* State not estopped to maintain action for forfeiture, when. *Id.* Not estopped to deny corporate existence or franchise, when. *Id.* When a corporation fails to perform duties which it was incorporated to perform, and in which the public have an interest, or does acts which are not authorized or it is forbidden to do, State may forfeit its franchise and dissolve it by an information in nature of a quo warranto. *Peo. v. Dashaway Assn.*, 84 Cal. 111; s. c., 24 Pac. Rep. 277. In such an action willful acts and neglects of its officers are attributable to the corporation, and will render it liable to judgment or decree of dissolution. *Id.* Grant of corporate franchise is always subject to the implied condition that it will not be abused. *Id.*

Superior court has no jurisdiction to appoint receiver of property of a corporation in a quo warranto proceeding, upon judgment of forfeiture of its corporate charter. *Havemeyer v. Superior Ct.*, 84 Cal. 327; s. c., 21 Pac. Rep. 121. Disposition of dissolved corporation. *Id.* Rights of directors, stockholders and creditors upon involuntary dis-

solution. *Id.* Up to date of its dissolution, a corporation, pending an action for forfeiture of its franchise, has same power to dispose of its property honestly and in good faith that any corporation has. *Id.*

In a proceeding by State in nature of quo warranto to deprive a corporation de facto of its charter and procure its dissolution on ground of want of substantial compliance with statutory requirements of its formation, the corporation de facto is a necessary party, and making it such, with averment that it is a corporation de facto, but not de jure, does not estop State from questioning its corporate character. *Peo. v. Water Co.*, 97 Cal. 276; s. c., 32 Pac. Rep. 236.

Filing of articles in wrong county fatal to creation of a corporation de facto. *Martin v. Deetz*, 102 Cal. 55; s. c., 36 Pac. Rep. 368. Corporations de facto and de jure defined. *Id.*

In an action by the State to dissolve a delinquent corporation, it has no interest either in the assets or debts of the corporation, and when it has secured the dissolution, its functions in the actions have ceased. *Ius. Co. v. Superior Ct.*, 101 Cal. 135; s. c., 35 Pac. Rep. 549.

When cause of forfeiture of a corporate privilege or franchise exists, it can be invoked only at instance of the State. *City v. R. R. Co.*, 101 Cal. 333; s. c., 35 Pac. Rep. 993.]

§ 808. When several persons claim to be entitled to the same \* \* \* franchise, one action may be brought against all such persons, in order to try their respective rights to such \* \* \* franchise.

§ 809. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any \* \* \* franchise, or privilege, judgment must be rendered that such defendant be excluded from the \* \* \* franchise, or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, must be paid into the treasury of the State.

[Does Constitution of 1879 restoring writ of quo warranto, which was abolished by Code of 1872, have the effect to repeal sections 803 to 809 of this Code? *Peo. v. Dashaway Assn.*, 84 Cal. 115; s. c., 24 Pac. Rep. 277. The rendition of judgment authorized by this section ends the proceeding, and no receiver can be appointed unless a new suit is commenced by a creditor or stockholder for that purpose. *Havemeyer v. Superior Ct.*, 84 Cal. 327; s. c., 24 Pac. Rep. 121. A judgment against a corporation for usurping franchises does not dissolve the corporation so as to allow appointment of a receiver under C. C. Pro., § 565. *Yore v. Superior Ct.*, 41 Pac. Rep. 477.]

### Part III. Special Proceedings.

## TITLE VI. VOLUNTARY DISSOLUTION OF CORPORATIONS.

Sec. 1227. Corporation, how dissolved.

1228. Application, what to contain.

1229. Application, how signed and verified.

1230. Filing application and publishing of notice.

1231. Objections may be filed.

1232. Hearing of application.

1233. Judgment-roll and appeals.

§ 1227. A corporation may be dissolved by the superior court of the county where its

Voluntary dissolution; frauds in management, C. Civ. Pro., §§ 1228-1233; Pen. C., §§ 7, 557, 558.

principal place of business is situated, upon its voluntary application for that purpose.

Dissolution by legislature. Const., art. XII, § 1; C. C., § 384. Involuntary dissolution. C. C. P., §§ 802 et seq. Receivers. C. C. P., § 565.

[The method prescribed by the Code for dissolution of a corporation is exclusive, and there can be no distributing of its capital stock under any other circumstances. *Kohl v. Lillenthal*, 81 Cal. 378; see *Havemeyer v. Superior Ct.*, 84 Cal. 327; s. c., 24 Pac. Rep. 121.]

§ 1228. The application must be in writing, and must set forth:

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members;

2. That all claims and demands against the corporation have been satisfied and discharged.

§ 1229. The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

§ 1230. If the court is satisfied that the application is in conformity with this title, a judge thereof must order it to be filed with the clerk, and that the clerk give not less than thirty nor more than fifty days' notice of the application, by publication in some newspaper published in the county; and if there are none such, then by advertisements posted up in three of the principal public places in the county.

§ 1231. At any time before the expiration of the time of publication any person may file his objections to the application.

§ 1232. After the time of publication has expired the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application, and if all the statements therein made are shown to be true, must declare the corporation dissolved.

§ 1233. The application, notices, and proof of publication, objections (if there be any), and declaration of dissolution, constitute the judgment-roll; and from the judgment an appeal may be taken, as from other judgments of the superior courts.

[See *Kohl v. Lillenthal*, 81 Cal. 378; s. c., 20 Pac. Rep. 401; 22 id. 689; *Havemeyer v. Superior Ct.*, 84 Cal. 365; s. c., 24 Pac. Rep. 121.]

## PENAL CODE.

### Preliminary Provisions.

Sec. 7. "Person" includes corporation.

§ 7. \* \* \* The word "person" includes a corporation as well as a natural person; \* \* \*

See C. C. P., § 17, note.

### Part I. Crimes and Punishments.

#### TITLE XIII. CRIMES AGAINST PROPERTY.

##### CHAPTER XIII.

#### Fraudulent Insolvencies by Corporations and other Frauds in their Management.

Sec. 557. Fraud in subscribing for stock.

558. Frauds in procuring organization or increasing capital.

559. Unauthorized use of name in prospectus, etc.

560. Misconduct of directors.

563. Frauds in keeping accounts in books of corporations.

564. Officers of corporation publishing false report of its condition.

565. Officer of corporation to permit an inspection of its books.

568. Directors of corporations presumed to have knowledge of its affairs.

569. Directors present at meeting.

570. Same, when directors absent from meeting.

571. Foreign corporations.

572. Directors defined.

§ 557. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corpora-

tion existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Subscription to articles of incorporation. C. C., § 292. To capital stock. C. C., § 293. Oath to subscription. C. C., § 295.

§ 558. Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the State prison not less than three nor more than ten years.

Civil liability of officers for making false certificate, etc. C. C., § 316. Organization of corporation. C. C., § 283. Records. C. C., §§ 377, 378. Increasing stock. C. C., § 359.

[Requisites of indictment against agent of a corporation for having made false entry in corporate books. *Peo. v. Palmer*, 53 Cal. 615.]

§ 559. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement, or announcement of any corporation or joint-stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association, is guilty of a misdemeanor.

§ 560. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended, either:

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner except as provided by law pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any note or other evidence of debt in payment of any installments actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation; is guilty of a misdemeanor.

[Section cited and applied. *Trust Co. v. Dorsey*, 72 Cal. 56; s. c., 12 Pac. Rep. 49.]

§ 563. Every director, officer, or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting, to make any material entry, in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the State prison not less than three nor more than ten years, or by imprisonment in the county jail not exceeding one year, and a fine not exceeding

five hundred dollars, or by both such fine and imprisonment.

[Indictment under this section against agent of a corporation, for making false entries in company's books, should specify particular entry complained of, and should at least state the substance of it, according to its legal effect. An averment held insufficient. *Peo. v. Palmer*, 53 Cal. 615.]

§ 564. Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notices required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony.

See C. C., §§ 316 and 558, note.

[This section defines two or more offenses. Indictment having charged defendant with commission of both offenses, it is demurrable. *Peo. v. Cooper*, 53 Cal. 647.]

§ 565. Every officer or agent of any corporation, having or keeping an office within this State, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

[See *Cotheal v. Brouwer*, 1 Selv. 567.]

§ 568. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

§ 569. Every director of a corporation or joint-stock association who is present at a meeting of the directors at which any act, proceeding or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered in the minutes of the directors.

§ 570. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

Criminal proceedings against corporations, Pen. C., §§ 571, 572, 1389, 1390-1397.

§ 571. It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another State, government, or country, if it was one carrying on business or keeping an office therefor within this State.

§ 572. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

See New York Penal Code, §§ 645-668.

**SPECIAL SECTION RELATING TO EMPLOYMENT OF MINORS.**

Sec. 1389. Minors in employ of corporations not to be sent to certain places.

§ 1389. (Enacted March 15, 1887.) No minors in the employ of any telephone company, special delivery company, or association, or any other corporation, or person or persons, engaged in the delivery of packages, letters, notes, messages, or other matter, shall be assigned by such corporation, or person or persons, to hire such minors to the keepers of houses, variety theaters, or other places of questionable repute, or to other persons connected with such places of questionable repute, nor permit them to enter such place of illegal or questionable calling; that this law shall apply alike to managers, superintendents, and agents of such corporations, and to be enforced against them.\*

**Part II. Criminal Procedure.**

**TITLE XX. MISCELLANEOUS PROCEEDINGS.**

**CHAPTER IX.**

**Proceedings against Corporations.**

Sec. 1390. Summons upon information, etc.

1391. Form of summons.

1392. When, and how served.

1393. Examination of the charge.

1394. Certificate of magistrate and return thereof.

1395. Grand jury to investigate if magistrate certifies there is sufficient cause.

1396. Appearance and plea.

1397. Fine on conviction, how collected.

§ 1390. Upon an information or presentment against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and

place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

Summons in civil cases. C. C. P., §§ 411, 412.

§ 1391. The summons must be substantially in the following form:

County of (as the case may be).

The People of the State of California to the (name of the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A. B. (or the presentment of the grand jury of the county, as the case may be), for (designating the offense generally).

Dated at the city (or township) of....., this ..... day of ....., 18....

G. H.,

Justice of the Peace (or as the case may be).

§ 1392. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

§ 1393. At the appointed time in the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

§ 1394. After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate, as prescribed in section eight hundred and eighty-three.

§ 1395. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed, or the district attorney file an information thereon, as in case of a natural person held to answer.

§ 1396. If an indictment is found, or information filed, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

§ 1397. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

\*Violation of this section is a misdemeanor.

Acts of 1891, 1897.

## LEGISLATIVE ACTS ENACTED SUBSEQUENTLY TO CODES.

- Act 1. To provide for payment of wages by corporations.  
2. Concerning wages of employees.

## Act 1.

AN ACT to provide for the payment of the wages of mechanics and laborers employed by corporations.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. Every corporation doing business in this State shall pay the mechanics and laborers employed by it the wages earned by and due them weekly or monthly, on such day in each week or month as shall be selected by said corporation.

§ 2. A violation of the provisions of section one of this act shall entitle each of the said mechanics and laborers to a lien on all the property of said corporation for the amount of their wages, which lien shall take preference over all other liens, except duly recorded mortgages or deeds of trust; and in any action to recover the amount of such wages or to enforce said lien, the plaintiff shall be entitled to a reasonable attorney's fee, to be fixed by the court, and which shall form part of the judgment in said action, and shall also be entitled to an attachment against said property.

(Approved March 31, 1891.)

## Act 2.

AN ACT requiring every corporation doing business in this State to pay their employees, and each of them, at least once in each and every month, the wages earned by such employee; to limit the defenses which may be set up by such corporation to assignments of wages, set-off or counterclaims, or the absence of such employee at the time of making payment, and in case of such absence the wages are payable upon demand; to prohibit assignments of wages for the purpose of evading the provisions of this act, and agreements to accept wages at longer periods than as herein provided as a condition of employment; to fix a penalty for this violation of the provisions of this act by such corporation, and to provide for the disposition of any fines recovered from corporations violating the same.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. Every corporation doing business in this State shall pay, at least once a month, each and every employee employed by such corporation, in transacting or carrying on its business, or in the performance of labor for it, the wages earned by such employee during the preceding month; Provided, however, That if at the time of payment any employee shall be absent, or not engaged in

his usual employment, he shall be entitled to said payment at any time thereafter upon demand.

§ 2. A violation of any of the provisions of section one of this act shall entitle each of said employees to a lien on all the property of said corporation for the amount of their wages, which lien shall take preference over all other liens, except duly recorded mortgages or deeds of trust; and in any action to recover the amount of such wages, or to enforce said lien, the plaintiff shall be entitled to a reasonable attorney's fee, to be fixed by the court, and which shall form part of the judgment in said action, and shall also be entitled to an attachment against said property. An unrecorded deed shall be no defense to such actions.

§ 3. That on the trial of any action against such corporation for a violation of the provisions of this act, such corporation shall not be allowed to set up any defense for a failure to pay monthly any employee engaged in transacting or carrying on its business the wages earned by such employee during the preceding month, other than the fact that such wages were not earned, except a valid assignment of such wages, a set-off or counterclaim against the same, or the absence of such employee from his usual employment at the time of the payment of the wages so earned by him.

§ 4. No assignment of future wages payable monthly under the provisions of this act, shall be made to the corporation from which such wages are or may become due, to any person, on behalf of such corporation, for the purpose of evading the provisions of this act, and all such assignments are hereby declared to be invalid.

§ 5. No corporation shall require, and no employee of such corporation shall make, any agreement to accept wages at longer periods than as provided in this act as a condition of employment.

§ 6. All wages earned by any employee engaged in the service of any corporation in this State shall be paid in lawful moneys of the United States, or in checks negotiable at face value on demand.

§ 7. Any corporation violating any of the provisions of this act shall be subject to a fine not exceeding one hundred dollars, or less than fifty dollars, for each violation, the same to be imposed by any court in this State having jurisdiction of offenses in which the penalty does not exceed a fine of one hundred dollars; said fine to be paid, by the judge or magistrate before whom a recovery may be had under the provisions of this act, into the general fund of the treasury of the county in which said conviction may be had.

§ 8 This act shall take effect and be in force from and after the first day of April, eighteen hundred and ninety-seven.

(Approved March 29, 1897.)

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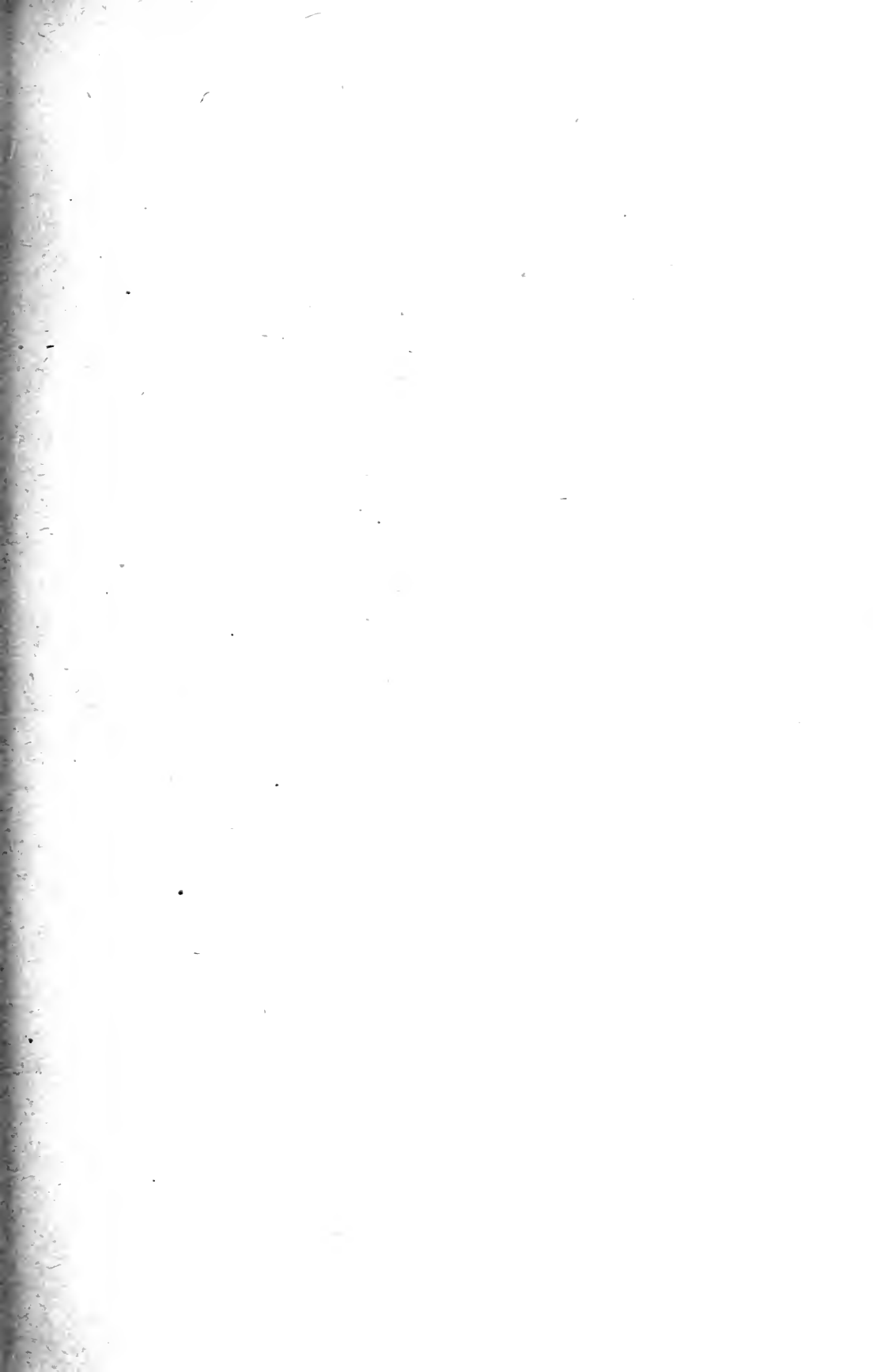
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# COLORADO.

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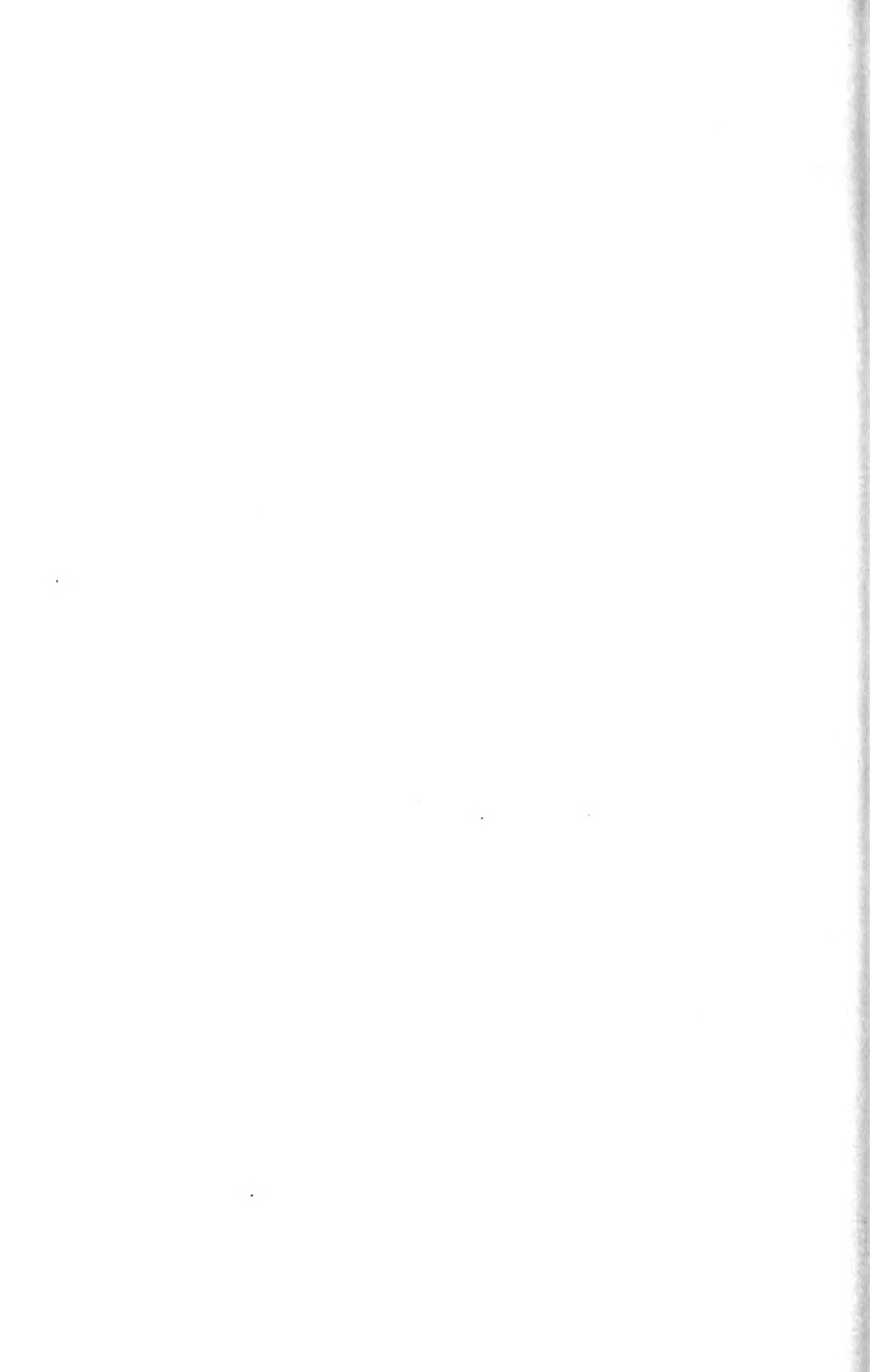
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## LEGISLATIVE ACTS ENACTED SUBSEQUENTLY TO 1890.



# COLORADO.

## CONSTITUTION OF COLORADO 1876.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE II.

##### Bill of Rights.

- Sec. 11. Laws impairing obligation of contracts and granting irrevocable privileges void.  
15. Private property not to be taken for public use without just compensation.

#### ARTICLE V.

##### Legislative Department.

- Sec. 25. Special laws prohibited in certain cases.  
33. Private corporations not to interfere with municipal functions.  
36. Trust funds not to be invested in stock or bonds of private corporations.  
38. No obligation or liability of any corporation owned by the State shall be extinguished except by payment.

#### ARTICLE X.

##### Revenue.

- Sec. 9. Power to tax corporations shall never be suspended.  
10. All corporations subject to taxation.

#### ARTICLE XI.

##### Public Indebtedness.

- Sec. 1. State not to loan its credit to corporations.  
2. Nor become a shareholder in any corporation.

#### ARTICLE XV.

##### Corporations.

- Sec. 1. Existing corporations not having commenced business, charter to be void.  
2. Charters not to be extended or amended by special law. Corporations must be organized under general laws.  
3. General assembly may revoke charters now existing.  
4. Railroads are public highways, and railroad companies common carriers.  
5. Competing lines may not consolidate.  
6. Unreasonable discrimination in rates prohibited.  
7. Transportation companies may have benefit of future legislation, how.

Sec. 8. Right of eminent domain shall never be abridged.

9. Stock or bonds not to be issued except for value.

10. Foreign corporations must have one or more known places of business.

11. Street railroads not to be constructed without consent of local authorities.

12. Retrospective laws for benefit of corporations not to be passed.

13. Telegraph lines may be constructed and maintained.

14. Consolidation of railroad, telegraph and express companies.

15. Liability of corporations to injured employees.

#### ARTICLE II.

##### Bill of Rights.

§ 11. No \* \* \* law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly.

Existing charters may be revoked. Art. 15, § 3. Retrospective laws for benefit of corporations, prohibited. Id., § 12. Dissolution shall not impair remedies. § 509. Reorganization not to affect pending actions. § 630. General assembly may alter or repeal corporation laws. § 634. See § 635.

[Provisions in a charter allowing exemptions from taxation is a part of the contract between the corporation and the State, and the obligation cannot be impaired by any subsequent legislation, either statutory or constitutional. Conrs. v. Seminary, 12 Col. 499; s. c., 21 Pac. Rep. 490.]

§ 15. Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an

attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public, shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

Right of eminent domain shall never be abridged. Art. XV, § 8. Foreign corporation not to acquire title to agricultural land. §§ 100-103. Certain corporations may acquire rights of way. §§ 616, 617.

## ARTICLE V.

### Legislative Department.

§ 25. The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

18th. Chartering or licensing ferries or toll bridges.

22d. Granting to any corporation, association or individual the right to lay down railroad tracks.

23d. Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever.

Corporations must be organized under general laws. Art. XV, § 2.

[The right to construct and operate a street railway in a city is a franchise which the sovereign authority alone can grant. *R. R. Co. v. R. R. Co.*, 2 Col. 673. And cannot be granted except by general law. *Id.* And such authority cannot be delegated. *Id.* The prevailing spirit of the Constitution is opposed to special legislation. *Brown v. Denver*, 7 Col. 309; s. c., 3 Pac. Rep. 455. Whether a general law can be made applicable in any given case is a legislative question, not judicial. *Id.*; *Carpenter v. Peo.*, 8 Col. 122; s. c., 5 Pac. Rep. 828; *Rodgers v. Peo.*, 9 Col. 451. *Contra*, *Coulter v. Routt Co.*, 9 Col. 261; s. c., 11 Pac. Rep. 199.]

§ 35. The general assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes, or perform any municipal function whatever.

§ 36. No act of the general assembly shall authorize the investment of trust funds by executors, administrators, guardians, or other trustees, in the bonds or stock of any private corporation.

§ 38. No obligation or liability of any person, association or corporation, held or owned by the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, or postponed, or in any way diminished by the general assembly, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury.

See art. 11, §§ 1, 2.

## ARTICLE X.

### Revenue.

§ 9. The power to tax corporations and corporate property, real and personal, shall never be relinquished or suspended.

See §§ 3781, 3783, 3789, 3791, 3861, 3862.

[A statute or contract limiting the taxing power must be closely scrutinized, and no enlargement of its scope should be permitted. *Comrs. v. Seminary*, 12 Col. 497; s. c., 21 Pac. Rep. 490.]

§ 10. All corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal, and other purposes, on the real and personal property owned or used by them within the territorial limits of the authority levying the tax.

See preceding section.

[*Carlisle v. Pullman, etc., Co.*, 8 Col. 326; s. c., 7 Pac. Rep. 164.]

## ARTICLE XI.

### Public Indebtedness.

§ 1. Neither the State nor any county, city, town, township or school district shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to or in aid of any person, company or corporation, public or private, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any person, company or corporation, public or private, in or out of the State.

See Art. V, § 38, and § 2, post.

§ 2. Neither the State nor any county, city, town, township or school district, shall make any donation or grant to, or in aid of, or become a subscriber to, or shareholder in, any corporation or company, or a joint owner with any person, company or corporation, public or private, in or out of the State, except as to such ownership as may accrue to the State, by escheat, or by forfeiture, by operation or provision of law; and except as to such ownership as may accrue to the State, or to any county, city, town, township or school district, or to either or any of them, jointly with any person, company or corporation, by forfeiture or sale of real estate for non-payment of taxes, or by donation or devise for public use, or by purchase by or on behalf of any or either of them, jointly with any or either of them, under execution in cases of fines, penalties or forfeiture of recognizance, breach of condition of official bond, or of bond to secure public moneys, or the performance of any contract in which they or any of them may be jointly or severally interested.

See art. V, § 38, and § 1, ante.



Corporations — Const., Art. xv, §§ 1-S.

[Neither the State nor any county, city, town, township or school district can make any donation or grant to, or in aid of, or become a subscriber or shareholder in any corporation or company. *R. R. Co. v. Lea*, 5 Col. 132.]

ARTICLE XV.

Corporations.

§ 1. All existing charters or grants of special or exclusive privileges under which the corporators or grantees shall not have organized and commenced business in good faith at the time of the adoption of this Constitution shall thereafter have no validity.

See § 633.

[Provision in a charter allowing exemptions from taxation is a part of the contract between the corporation and the State, and the obligation cannot be impaired by any subsequent legislation, either statutory or constitutional. *Comrs. v. Seminary*, 12 Col. 499; s. c., 21 Pac. Rep. 490.]

§ 2. No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the State; but the general assembly shall provide by general laws for the organization of corporations hereafter to be created.

Special laws prohibited. Art. V, § 25. General laws for incorporating. §§ 472 et seq. They may be altered or repealed. § 634.

[The subject-matter of art. XV relates to private corporations. The reference to municipal and other corporations in section 2 was for the purpose of excepting them from the provision respecting special legislation. *Carpenter v. Peo.*, 8 Col. 116; s. c., 5 Pac. Rep. 828. The charter of a corporation is its constitution, and gives it all the powers it possesses. *Id.* Private corporations are under the control of the State, but in a much more limited sense than municipal corporations in their charters, or in the organic law, so far as fundamental charges in such charters are concerned. *Carpenter v. Peo.*, 8 Col. 126; s. c., 5 Pac. Rep. 828. A provision in a statute adopted by our legislature may, when accepted by a private citizen or corporation, result in a contract which succeeding legislatures are powerless to repudiate. *Peo. v. Hall*, 8 Col. 485; s. c., 9 Pac. Rep. 34.]

§ 3. The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of the State, in such manner, however, that no injustice shall be done to the corporators.

General Laws may be altered or repealed. § 634.

§ 4. All railroads shall be public highways, and all railroad companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between

any designated points within this State, and to connect at the State line with railroads of other States and Territories. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad.

May condemn rights of way. §§ 616, 617. Consolidation prohibited. § 5, post. See § 14, post.

[As to use of streets, and compensation to abutting property owners when street is used for railroad purposes. *Denver, etc., Co. v. Domke*, 11 Col. 247; s. c., 17 Pac. Rep. 777. Construction of last clause of section 4. *Denver, etc., R. Co. v. Atchison, etc., Co.*, 13 Fed. Rep. 546; *Same v. Same*, 15 id. 650; 110 U. S. 685; s. c., 4 Sup. Ct. Rep. 185. The above section is not in conflict with § 8, art. I, of the United States Constitution. *Id.* And does not prevent issue being tendered in condemnation proceedings under section 2 of this article. *Denver, etc., Co. v. R. R. Co.*, 34 Fed. Rep. 386. Railroad companies are quasi public corporations, their directors acting in the double capacity of agents for the company and trustees for the public. *R. R. Co. v. Taylor*, 6 Col. 1.]

§ 5. No railroad corporation, or the lessees or managers thereof, shall consolidate its stock, property or franchises with any other railroad corporation owning or having under its control a parallel or competing line.

See § 14, post.

§ 6. All individuals, associations and corporations shall have equal rights to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges or in facilities for transportation of freight or passengers within the State, and no railroad company, nor any lessee, manager or employe thereof, shall give any preference to individuals, associations or corporations in furnishing cars or motive power.

[Free passes prohibited to all public officials and legislators by Const., art. XII, § 6. Railroads are entitled to fair and reasonable rates of compensation. *R. R. Co. v. Taylor*, 6 Col. 1. And where such rates cannot be agreed upon, it is for the courts to decide. *Id.* Establishment of maximum rates of transportation, and laws forbidding discrimination, no obstacles to the enforcement of the rights of express companies. *Id.* Railroad company a quasi public corporation. Directors are trustees for the public. *Id.* This section is but declaratory of the common law. *Bayles v. Ry. Co.*, 13 Col. 191; 22 Pac. Rep. 344. And imposes no greater obligation on companies. *Atchison, etc., Co. v. Denver, etc., Co.*, 110 U. S. 674; s. c., 4 Sup. Ct. Rep. 185.]

§ 7. No railroad or other transportation company in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation without first filing in the office of the secretary of State an acceptance of the provisions of this Constitution, in binding form.

See §§ 1, 2, ante.

§ 8. The right of eminent domain shall never be abridged, nor so construed as to

prevent the general assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

Right of eminent domain. See art. II, § 15, and cross-references.

[For the construction of last clause, see *Ry. Co. v. DeBusk*, 12 Col. 294; s. c., 20 Pac. Rep. 752; *Same v. Moffatt*, 12 Col. 310; s. c., 20 Pac. Rep. 759; *Ry. Co. v. Henderson*, 10 Col. 1; s. c., 13 Pac. Rep. 916.]

§ 9. No corporation shall issue stock or bonds, except for labor done, service performed, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock, first obtained at a meeting held after at least thirty days' notice given in pursuance of law.

See § 618.

[Stocks and bonds issued in violation of above section are ipso facto invalid, and do not constitute their holders shareholders in a corporation. *Arkansas, etc., Co. v. F. L. & T. Co.*, 13 Col. 587; s. c., 22 Pac. Rep. 959.]

§ 10. No foreign corporation shall do any business in this State without having one or more known places of business and an authorized agent or agents in the same, upon whom process may be served.

See §§ 499-502. Foreign corporation not to acquire agricultural lands. §§ 100, 101, 103. See act in relation to foreign corporations, at p. 27. Publication of certain legal notices. See act of 1895, at p. 29.

[This section enforced by section 499 of statutes, which is not in conflict with United States Constitution. *Utley v. Mining Co.*, 4 Col. 369. A corporation is the creature of local laws, and recognition of its existence and enforcement of its contracts without the limits of the sovereignty which created it, is dependent upon comity. *Id.* What is sufficient compliance with this section. *Goodwin v. Mortg. Co.*, 110 U. S. 5; s. c., 3 Sup. Ct. Rep. 473.]

§ 11. No street railroad shall be constructed within any city, town or incorporated village, without the consent of the local authorities having the control of the street or

highway proposed to be occupied by such street railroad.

§ 12. The general assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operations, or which imposes on the people of any county or municipal subdivision of the State, a new liability in respect to transactions or considerations already passed.

See art. II, § 11.

§ 13. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and to connect the same with other lines, and the general assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph company owning or having control of a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph.

See next section.

§ 14. If any railroad, telegraph, express or other corporation organized under any of the laws of this State, shall consolidate, by sale or otherwise, with any railroad, telegraph, express or other corporation organized under any laws of any other State or Territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State in all matters which may arise, as if said consolidation had not taken place.

See § 4, ante. Consolidation prohibited. § 5, ante.

§ 15. It shall be unlawful for any person, company or corporation to require of its servants or employees, as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employees thereof, and such contract shall be absolutely null and void.

Aliens; blacklisting; conveyances — Stat., §§ 100, 101, 103, 239, 240, 427, 453.

## STATUTES OF COLORADO - 1891.

### CHAPTER III.

#### Aliens.

Sec. 100. Foreign corporations prohibited from acquiring title to agricultural lands.

101. Attorney-general to institute proceedings for forfeiture.

103. Non-resident corporation or a syndicate may acquire title to city and mineral lands.

§ 100. From and after the passage of this act non-resident aliens, and corporations or syndicates organized under the laws of any foreign government, shall be forever prohibited from acquiring the title to, or any use, interest or benefit in any body or tract of agricultural, arid or range land within the State of Colorado, where such body or tract of land in compact form exceeds in any instance two thousand (2,000) acres.

Requirements of foreign corporation. Const., art. XV, § 10; §§ 499-502.

[Foreign corporation may take and hold real estate and mines. *Fritts v. Palmer*, 132 U. S. 282; s. c., 10 Sup. Ct. Rep. 282.]

§ 101. When any such lands, use, interest or benefit therein shall, in violation of the intent of this act, be acquired, or purport to be acquired, upon notice thereof, in any form, to the attorney-general, it shall be his duty to cause proceedings to be instituted in the district court of the proper county or counties, to cause the same to be forfeited to the people of the State of Colorado.

§ 103. This act shall not be so construed as to prevent any non-resident alien, or corporation or syndicate organized under the laws of any foreign government, from acquiring the title to lands within the limits of any incorporated town or city in this State, or from acquiring the title to and possessing and working any of the mines in this State, or from engaging in any industry in this State to the same extent as citizens or residents of the United States or this State, save and except only as limited by the provisions of section one of this act.

[See *Fritts v. Palmer*, 132 U. S. 282; s. c., 10 Sup. Ct. Rep. 282.]

### CHAPTER XV.

#### Blacklisting.

Sec. 239. Blacklisting prohibited.

240. Penalty.

§ 239. That no corporation, company or individual shall blacklist or publish, or cause

to be blacklisted or published, any employe, mechanic or laborer, discharged by such corporation, company or individual, with the intent and for the purpose of preventing such employe, mechanic or laborer from engaging in or securing similar other employment from any other corporation, company or individual.

§ 240. If any officer, or agent of any corporation, company or individual, or other person, shall blacklist, or publish, or cause to be blacklisted or published, any employe, mechanic, or laborer, discharged by such corporation, company or individual, with the intent and for the purpose of preventing such employe, mechanic or laborer from engaging in or securing similar or other employment, from any other corporation, company or individual, or shall in any manner conspire or contrive by correspondence, or otherwise, to prevent such discharged employe from securing employment, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty (50) dollars nor more than two hundred and fifty (250) dollars, or be imprisoned in the county jail not less than thirty, nor more than ninety days, or both.

Labor unions not conspiracies. § 1295.

### CHAPTER XXIX.

#### Conveyances.

Sec. 427. Corporations may convey lands.

453. Conveyances, how executed by a private corporation.

§ 427. Any person, association of persons, body politic or corporate, who shall be entitled to hold real estate, or any interest in real estate whatever, shall be authorized to convey the same to another or others, or body corporate or politic, by deed.

Power of corporation to hold and convey. § 476.

§ 453. Private corporations authorized by law to convey any of their real estate, may convey the same in the manner authorized by this chapter, or by deed under their common seal, subscribed by their president or other head officer.

Manner of conveying lands by corporation. §§ 622, 476, 427.

**CHAPTER XXX.****Corporations.****DIVISION I. — ORGANIZATION — GOVERNMENT.**

Sec. 472. How name shall commence and end.

**1. INCORPORATION — POWERS.**

- Sec. 473. Certificate of incorporation, contents of.  
 474. Corporations may procure and file copy of certificate.  
 475. Certificate to be filed and recorded by secretary of State. Certificate prima facie evidence of corporate existence.  
 476. General powers.

**2. SHARES — MANAGEMENT.**

- Sec. 480. Shares personal property. Par value. Action to recover installments. Forfeiture.  
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**4. ASSESSMENTS — REPORTS.**

- Sec. 489. All assessments must be pro rata.  
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 491. Corporation to make annual report, when.  
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 493. Meetings; where and how called.  
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- Sec. 495. Trustee or pledgee not personally liable.  
 496. Executors, trustees, etc., to vote stock.  
 497. Forfeiture and dissolution of insolvent corporation.  
 498. Corporation may accept law of other States or government.

**6. FOREIGN CORPORATIONS.**

- Sec. 499. Foreign corporations to file certificate with secretary of State.  
 500. Also copy of charter.  
 501. Failure to file, liability.  
 502. Duty of secretary of State. Copy of charters and certificates shall be received as evidence.

**7. LEGAL PROCEEDINGS.**

- Sec. 503. Corporations may sue and be sued as natural persons.  
 504. Certified copy of articles prima facie evidence.  
 505. Consent of local authorities required for construction of street or other railroads.  
 506. Service of process on corporations. Venue of suits.

**8. BUSINESS MANAGEMENT.**

- Sec. 507. Statement of affairs; who may demand.  
 508. Transfer book to be kept.  
 509. Dissolution not to impair remedies against corporations.

**15. GENERAL PROVISIONS.**

- Sec. 616. Certain corporations may condemn rights of way.  
 617. And may enter upon lands to survey.  
 618. Stock or bonds not to be issued except for value.  
 619. Dissolution; directors to be trustees of creditors and stockholders.  
 620. Title to property to vest in such directors.  
 621. Corporation may sue its members.  
 622. Corporation may convey land by deed.  
 623. And may appoint agents to convey.  
 624. Corporations must be formed under this act.  
 625. Change of name — of business — of amount of stock — consolidation — proceedings — only of same kind.  
 626. Special meetings, how called.  
 627. Voting at such meeting.  
 628. Consolidation.  
 629. Publication of change of organization.  
 630. Change not to affect pending suits.  
 633. How companies may come under this act.  
 634. General assembly may alter, amend or repeal this act.  
 635. Prior corporations confirmed upon complying with this act.

§ 472. Corporations may be formed under the provisions of this act, for any lawful purpose, but the corporate name of every corporation hereafter organized (except banks and corporations not for pecuniary profit), shall commence with the word "the" and end with the word "corporation," "company," "association," or "society," and shall indicate by its corporate name the business to be carried on by said corporation.

Corporations not to be created by special acts. Const., art. V, § 25; art. XV, § 2.

[Object of statute is to prevent fraud upon the public. State v. McGrath, 75 Mo. 424; s. c., 9 Am. Corp. Cas. 519.]

§ 473. At any time hereafter any three or more persons (except as hereinafter provided) who may desire to form a company for the purpose of carrying on any lawful business, may make, sign and acknowledge before some officer competent to take the acknowledgment of deeds, certificates in writing, in which shall be stated:

- (1) The corporate name of said company.
- (2) The objects for which the company shall be created.
- (3) The amount of capital stock of said company.
- (4) The term of its existence, not to exceed twenty years, except as hereinafter provided, save and except to make perpetual corporations insuring lives of individuals which have been heretofore or may be hereafter organized under the laws of Colorado.
- (5) The number of shares of which the said stock shall consist.
- (6) The number of directors or trustees of said company, and
- (7) The names of those who shall manage the affairs of such company for the first year of its existence.
- (8) The name of the town or place, and the county, in which the principal office of the company shall be kept.

Organization of corporations — Stat., §§ 474-476.

(9) The name of the county or counties in which the principal business shall be carried on; and they shall make as many such certificates as may be necessary, so as to file one in the office of the recorder of deeds in each of such county or counties, and one in the office of the secretary of State; and when any company shall be created under the laws of this State for the purpose of carrying on part of its business beyond the limits thereof, such certificate shall state that fact and shall, also, state the name of the town and county in this State in which the principal office of said company shall be kept, and shall state the name of the county in which the principal business of such company is to be carried on within this State.

Amendment of articles. See §§ 625-630, and act of 1891, at p. 27. Corporate powers. §§ 476, 481.

[Sovereign alone can grant a franchise. *D. & S. Ry. Co. v. D. C. Ry. Co.*, 2 Col. 673. Semble, that the general law of the territory of Colorado did not provide for granting the right to construct and operate a street railway. *Id.* A railway so constructed without authority is a public nuisance which a court of equity will enjoin. *Id.* Grants of franchises are to be strictly construed. *D. & S. Ry. Co. v. D. C. Ry. Co.*, 2 Col. 680. And in cases of doubt, construction is to be in favor of the people. *C. & G. Co. v. Peo.*, 5 Col. 45. A corporation having been recognized by legislative enactment, all inquiry into its original organization is precluded. *Cowell v. Col. S. Co.*, 3 Col. 82. When individuals, officers, etc., are ex officio corporations. *Smith v. Pipe*, 3 Col. 196. A corporation is resident only of the State which creates it. It cannot migrate to another sovereignty. *Cook v. Hager*, 3 Col. 388; *Utey v. L. M. Co.*, 4 id. 371. It is well settled in Colorado that the validity of the existence of a corporation cannot be questioned collaterally, but only by a direct proceeding instituted by the State for that purpose. And neither the members of a de facto corporation, nor third persons who have contracted with it in its corporate capacity, will be heard to deny such capacity or to question its corporate existence. See *D. & S. Ry. Co. v. D. C. Ry. Co.*, 2 Col. 673; *Cowell v. Col. S. Co.*, 3 id. 82; *Humphreys v. Mooney*, 5 id. 282; *Peo. v. Cheeseman*, 7 id. 376; s. c., 3 Pac. Rep. 716; *Jones v. Hardware Co.*, 40 id. 457. As to what is a sufficient compliance with the requisites of the law to constitute a corporation de facto: see *Schroers v. Fisk*, 10 Col. 605; s. c., 16 Pac. Rep. 285; *Duggan v. M. & I. Co.*, 11 Col. 116; s. c., 3 Pac. Rep. 716; *Murphy v. Mooney*, 5 Col. 282; *Peo. v. Cheeseman*, supra; *Grand R. B. Co. v. Rollins*, 13 Col. 6; s. c., 21 Pac. Rep. 897; *Edwards v. D. & R. G. R. Co.*, 13 Col. 65; s. c., 21 Pac. Rep. 1011; *Jones v. Hardware Co.*, supra; *Bates v. Wilson*, 14 Col. 141; s. c., 24 Pac. Rep. 104. Three things necessary to constitute a de facto corporation. (1) A law authorizing the creation of such a corporation. (2) A bona fide attempt to comply with such law. (3) A user of corporate powers. *Duggan v. M. & I. Co.*, supra. Subscription and acknowledgment of articles, properly authenticated, may be made as well without as within the State. *Humphreys v. Mooney*, supra. Officer taking acknowledgment need not certify that he is personally acquainted with the parties signing the articles. *Peo. v. Cheeseman*, supra. In construing grants of corporate franchises, Federal courts are bound to follow State courts. *Mooney v. Humphrey*, 4 McCrary, 113; s. c., 12 Fed. Rep. 613.]

§ 474. All corporations formed under the provisions of an act of the general assembly of this State, entitled "An act to provide for

the formation of corporations," approved March 14, 1877,\* that may have heretofore extended, or may hereafter extend their business into counties other than those contemplated or specified in their original certificate of incorporation, may procure from the secretary of State a certified copy, or copies, of the certificate filed in his office, and file such certified copy in the office of the recorder of deeds in each county or counties in which such business has been or may be extended, and in any other county in which the business of such corporation has been carried on, and when so filed such certified copy shall have the same force and effect as an original certificate filed at the time of the incorporation of such companies would have.

§ 475. When the certificates shall have been filed as aforesaid, the secretary of State shall record and carefully preserve the same in his office, and a copy thereof duly certified by the secretary of State under the great seal of the State of Colorado, shall be evidence of the existence of such company, but no certificate shall be filed or received for two corporations bearing the same name.

See §§ 504, 502.

[Existence of de facto corporation cannot be attacked collaterally. See § 473, note. Where ownership is alleged in a corporation, its corporate existence, at least de facto, must be proved. *Miller v. Peo.*, 13 Col. 166; s. c., 21 Pac. Rep. 1025. As to what is sufficient proof of corporate existence. *Denver, etc., Co. v. Driscoll*, 12 Col. 525; s. c., 21 Pac. Rep. 708; *Smith v. Cisson*, 1 Col. 31. Articles certified by the county recorder may also be introduced, to prove some secondary fact. *Schiffer v. Adams*, 13 Col. 749; s. c., 22 Pac. Rep. 964.

Right of corporation to which property was transferred before the fee for filing its articles of incorporation with the secretary of State was paid, to claim the property transferred as a co-partnership. *Jones v. Hardware Co.*, 40 Pac. Rep. 457.]

§ 476. Corporations formed under this act shall be bodies corporate and politic in fact and in name, by the name stated in such certificate, and by that name have succession for the period for which they are organized; may in any court of law or equity in this State sue and be sued, may have a common seal, which they may alter or renew at pleasure, by filing an impression of the same in the office of the secretary of State; may own, possess and enjoy so much real and personal estate as shall be necessary for the transaction of their business, whether acquired by purchase, grant, devise, gift or otherwise and may, from time to time, sell and dispose of the same or any part thereof when not required for the use of the corporation. They may borrow money and pledge their franchises and property both real and personal to secure the payment thereof; and may have and exercise all the

\*The body of the corporation law contained herein.

## Shares of stock — Stat., § 480.

powers necessary and requisite to carry into effect the objects for which they may be formed, as named in their certificate of incorporation.

Corporation may convey lands. § 427. How. §§ 453, 622, 623. Corporation may sue and be sued. See § 503, and cross-references. May make by-laws. § 484.

[The charter of a corporation is its constitution and gives it all the powers it possesses. *Carpen-ter v. Peo.*, 8 Col. 116; s. c., 5 Pac. Rep. 828. Grants of privileges must be strictly construed. *D. & S. Ry. Co. v. D. C. Ry.*, 2 Col. 680. Corporate powers construed strictly against corporation and in favor of the public. *C. & G. R. Co. v. People*, 5 Col. 45. Discussion of power of corporation and its agents to make contracts. See *Spangler v. Butterfield*, 6 Col. 356. Express authority to borrow money not necessary. *Mining Co. v. Bank*, 2 Col. 256; s. c., 5 Am. Corp. Cas. 176. When a contract has been executed and enjoyed, corporation is estopped to deny its capacity. *Id.* Corporation and corporate powers defined. *Utley v. L. M. Co.*, 4 Col. 372-3. Corporation is a trustee for its stockholders. *Ditch Co. v. Elliott*, 10 Col. 322; s. c., 15 Pac. Rep. 691. And the relation between corporation and its stockholders is one of contract arising from subscription to stock, and to be construed from the provisions of the charter. *Id.* Right of way is property, which can be sold under this section. *Bailey v. P.*, etc., Co., 12 Col. 234; s. c., 21 Pac. Rep. 35. The power to purchase necessarily implies the power to incur obligation to pay, provisions of the by-laws to the contrary notwithstanding. *Arapahoe Co. v. Stevens*, 13 Col. 540; s. c., 22 Pac. Rep. 823. The body corporate cannot be separated from its constituency. *Ark.*, etc., Co. v. *F. L. & T. Co.*, 13 Col. 587; s. c., 22 Pac. Rep. 947. Suits must be brought in the name and by authority of the corporation. *Id.* When individual shareholders may sue. *Id.* When corporation must be made defendant. *Eyers v. Rollins*, 13 Col. 22; s. c., 21 Pac. Rep. 894. Corporation liable in tort, same as natural persons, and exemplary damages may be awarded against them. *W. U. Tel. Co. v. Eyser*, 2 Col. 141. Degrees of negligence; contributory negligence. *Id.* Defendant sued as a corporation cannot deny its own existence, either in abatement or in bar. *Id.* Agent acting within scope of authority, when. *Id.* Extent of authority of agent to employ laborers. *Gregory Co. v. Raber*, 1 Col. 511. Corporate seal attached to an instrument purporting to be the act of the corporation and signed by the president, prima facie evidence that it was affixed by proper authority. *Mining Co. v. Bank*, 2 Col. 227; s. c., 5 Am. Corp. Cases, 176.

The superintendent of a mining corporation has no authority, by virtue of his office, merely to borrow money. *Mining Co. v. Bank*, 2 Col. 565; s. c., 5 Am. Corp. Cas. 176. Nor has the president, as such, authority to repay such unauthorized loan. *Id.* One of the privileges of a corporation is to own real estate. *W. C. T. U. v. Taylor*, 8 Col. 78; s. c., 5 Pac. Rep. 826. As to power of corporation to hold real estate, see *Cowell v. Col. Sp. Co.*, 3 Col. 88; affirmed, 100 U. S. 55. The ratification of the acts of an agent is tantamount to original authority. *Mining Co. v. Donat*, 10 Col. 533; s. c., 16 Pac. Rep. 157. And such ratification is often presumed from lapse of time; one hundred days sufficient to presume ratification. *Id.* The plea of ultra vires not an absolute defense in all cases of excess of power. Sometimes such a defense is unconscionable. *Ins. Co. v. McClelland*, 9 Col. 21; s. c., 9 Pac. Rep. 771. Ultra vires, when a defense. *Rollins v. Comrs.*, 15 Col. 103; s. c., 25 Pac. Rep. 319. The cessation of official relations between corporation and its manager may affect contractual relation dependent thereon. *Coal Co. v. Hinds*, 15 Col. 173; s. c., 25 Pac. Rep. 502. Validity of contract with min-

ing company for ores to be mined. *S. M. Co. v. S. & R. Co.*, 16 Col. 118; s. c., 26 Pac. Rep. 326. One corporation acting as agent of another. *Ins. Co. v. Jones*, 16 Col. 515; s. c., 27 Pac. Rep. 807. Rule of agency not changed by accidental circumstances. *Id.*

A corporation may, by entering under a lease executed by an officer without authority, and paying rent, ratify it. *Jenet v. Albers*, 43 Pac. Rep. 452.

A person dealing with a corporation as such, admits its corporate existence. *Plummer v. Mercantile Co.*, 23 Col. 190; s. c., 47 Pac. Rep. 294.]

(§§ 477, 478, 479, relating to amendments to certificate, are repealed by act of April 6, 1891. See p. 27.)

§ 480. The shares of stock shall not be less than one dollar nor more than one hundred dollars each, and shall be deemed personal property and transferable as such in the manner provided by the by-laws, and subscriptions therefor shall be made payable to the corporation, and shall be payable in such installments and at such time or times as shall be determined by the directors or trustees; and an action may be maintained in the name of the corporation to recover any installment which shall remain due and unpaid for the period of twenty days after personal demand therefor, or, in case where personal demand is not made within thirty days after, a written or printed demand has been deposited in the post-office, properly addressed to the post-office address of such delinquent stockholder. The directors or trustees may by by-laws prescribe for a forfeiture or sale of stock on failure to pay the installments or assessments that may, from time to time, become due, but no forfeiture of stock, or of the amount paid thereon, shall be declared as against any estate or against any stockholder before demand shall have been made for the amount due thereon, either in person or by written or printed notice duly mailed to the last known address of such stockholder, at least thirty days prior to the time when such forfeiture is to take effect; Provided, That the proceeds of any sale, over and above the amount due on said shares, shall be paid to the delinquent stockholder.

Assessments on stock. § 489. Dividends. § 492. Stock not to be issued except for value. Const., art. XV, § 9; § 618. Shares of stock subject to levy and sale. §§ 2576-2581. Attachment of. §§ 2706-7. Taxation of. §§ 3781 et seq.

[This section gives the power to pass by-laws regulating the transfer of stock. *Conway v. St. John*, 14 Col. 30; 23 Pac. Rep. 170. Title to stock in a corporation, as against creditors, can only pass by transfer on books of corporation. *Id.* Shares of stock in a company duly incorporated are personal property. *McClaskey v. Lake View M. & T. Co.*, 18 Col. 65; s. c., 31 Pac. Rep. 333; *Mercantile Co. v. Davis*, 18 Col. 93; s. c., 31 Pac. Rep. 495. A suit by a stockholder to have certain stock cancelled, not brought in good faith, but in the interest of a rival corporation, cannot be maintained. *Beshoar v. Chappell*, 40 Pac. Rep. 244.]

§ 481. (As amended April 8, 1895.) The corporate powers shall be exercised by a board of directors or trustees of not less than three, or more than thirteen, who shall respectively be stockholders in said company, and who shall (except the first year) be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the company; and public notice of the time and place of holding such elections, and also of all general or special meetings, shall be published not less than ten days previous thereto in a newspaper published in or nearest to the place in which the principal office of the company shall be kept, as specified in its articles of incorporation, and by delivering personally or depositing in the post-office at least thirty days before such meeting a notice properly addressed to each stockholder, signed by the president or secretary, stating the time and object of said meeting; and no business shall be transacted at any special meeting except such as shall be mentioned in said notice; if, however, any stockholder shall fail to furnish the secretary with his correct post-office address, he shall not be entitled to such separate notice. Elections of directors or trustees shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy: Provided, a majority of the stock issued shall be represented; and if a majority of such stock shall not be represented, such meeting may be adjourned by the stockholders present for a period not exceeding sixty days at any one adjournment. When it is found that a majority of the stock is represented at such meeting or adjourned meeting, the stockholders shall proceed to nominate the number of directors, trustees or managers to be elected, each stockholder having the right to nominate. The election shall be by ballot, on which each person voting shall write the names of as many persons as are to be elected from the nominees. Each stockholder shall have the right to vote in person or by proxy for the number of shares owned by him or her, and in balloting for directors he or she may vote said number of shares for as many directors, trustees or managers as are to be elected, or he or she may cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his or her shares of stock shall equal, or to distribute them on the same principle among as many candidates as he or she may desire; and the persons having the highest number of votes in consecutive order shall be declared elected the board of directors, trustees or managers for that year, and such directors, trustees or managers shall not be elected in any other way. And when any vacancy shall happen among the directors or trustees, by death, resignation, or otherwise, it shall be filled for the remainder of the year as shall be provided by the by-laws of said company.

The board of directors or trustees of a mining or manufacturing corporation shall not have power to encumber the mines or plant of such corporation, or the principal machinery incident to the production from such mine or plant, until the question shall have been submitted at a proper and legal meeting of the stockholders and a majority of all the shares of stock shall have voted in favor of such proposition; and any mortgaging or incumbering of such property, without such consent shall be absolutely void, and the vote upon such proposition shall be entered on the minutes of the corporation.

Annual report of directors. § 491. General powers. § 476. Business management of corporation. §§ 507-509.

[Declaration of director regarded as an admission by the corporation. *Gregory Co. v. Raber*, 1 Col. 513. Stockholders may instruct the trustees as to the course to be pursued, but the power of a corporation is vested in the trustees, and they only can express it at will. *Mining Co. v. Bank*, 2 Col. 565; s. c., 5 Am. Corp. Cas. 176. The delegation of power to the trustees is exclusive. *Id.* Oral evidence of the proceedings of corporate meeting, of which a record is shown to exist, is inadmissible. *Id.* And strict proof of authenticity of record is required. *Id.* In a corporation a majority makes a quorum, and a majority of a quorum may act. *Peo. v. Lathrop*, 3 Col. 452. President and secretary cannot bind corporation by a note, without proof of authority. *Breed v. Bank*, 4 Col. 506. The ineligibility of persons to act as officers of corporation cannot be taken advantage of in a collateral proceeding. *Humphreys v. Mooney*, 5 Col. 292. The persons named in the certificate as directors of the company for the first year, are created such by operation of law. *Id.* Mode of transacting business by directors. *Longmont, etc., Co. v. Coffman*, 11 Col. 333; s. c., 19 Pac. Rep. 508. Stockholders alone can be directors under the laws of this State. *Byers v. Rollins*, 13 Col. 26; s. c., 21 Pac. Rep. 894. A corporation, both at common law and under the statute, acts by and through its trustees and agents, and cannot act otherwise. *A. R., etc., Co. v. F. L. & T. Co.*, 13 Col. 598; s. c., 22 Pac. Rep. 958. Directors of a corporation are its agents, and represent stockholders, and are therefore, held to the exercise of the utmost good faith. *Bill v. Tel. Co.*, 16 Fed. Rep. 14. Therefore, corporations may repudiate a contract made by the directors when they, themselves, are the other contracting party. *Id.* Authority of officer or agent of corporation to execute a note, how determined. *Foster v. Mining Co.*, 17 Fed. Rep. 130; s. c., 5 McCrary, 331. While the officers of a corporation occupy trust relations to it, trust relations to the corporation do not, as to stockholders, create trust relations inter sese. *Gillett v. Bowen*, 23 Fed. Rep. 625. Directors not entitled to compensation for services as such, unless provided for or expressly sanctioned by the charter. *Brown v. R. M. S. Mines*, 17 Col. 421; s. c., 30 Pac. Rep. 66. But otherwise if services are clearly outside ordinary duties of directors and in pursuance of an express contract. *Id.* Question whether a purchase of corporate property by a director which was subsequently ratified by the stockholders was not fraudulent as to corporate creditors. *Crymble v. Milvancy*, 40 Pac. Rep. 499.

Persons acting as directors, and contracting debts, are estopped to deny their official position. *Janet v. Abers*, 43 Pac. Rep. 452.

And the fact that by statute directors could hold office for one year only did not exempt them from liability as such if they continued in office after that year. *Janet v. Nims*, 43 Pac. Rep. 147.]

§ 482. In case it should happen at any time that an election of directors or trustees shall

not be held on the day designated by the by-laws of said company, when it ought to have been held, the company for that reason shall not be dissolved; but such directors or trustees may be chosen at any subsequent meeting of the stockholders, at which a majority of the stock is represented, such meeting to be called by the directors or trustees, or any two stockholders, by giving public notice of the time and place of holding such meeting, in the manner provided by section 6 of this chapter; Provided, If a majority of such stock be not represented at the meeting so called, the same may be adjourned by the stockholders present, for a period not exceeding sixty days.

§ 483. The directors or trustees shall elect one of their number to be president, and may elect or appoint such subordinate officers as the company may, by its by-laws, designate, and such subordinate officers shall, if required by the company, give security for the faithful discharge of their official duties.

Annual report of officers. § 491. Liability for false report. § 494. See §§ 3861-2.

[An agent appointed without a seal by the president of a corporation can bind the corporation by his acts. *Tel. Co. v. Graham*, 1 Col. 182. The usual course of business of a corporation is addressed through its president, and he cannot at will put off his official character, assume the personal status, and deny to those having business with the corporation access to it through him. *Mining Co. v. Bank*, 1 Col. 531; *Mining Co. v. Bank*, 2 id. 258. Powers and authority of president. 1 Col. 532. Corporation responsible if it employs negligent agents. *Tel. Co. v. Claymore*, 2 Col. 36. Corporation may deny its signature to a written instrument by the oath of its authorized agent. *Mining Co. v. Tappan*, 2 Col. 124. Agent's authority to sign instrument can only be denied under oath. *Id.* Authority of agent to borrow money; when must be express and when implied. *Spangler v. Butterfield*, 6 Col. 364. When superintendent and secretary are general agents of a corporation they are clothed with all powers essential to its proper management. *Webb v. Smith*, 6 Col. 366. Corporation bound by contract under seal. *Williams v. Canal Co.*, 13 Col. 479; 22 Pac. Rep. 806.

Personal liability of officers. *Cook v. Merritt*, 15 Col. 212; s. c., 25 Pac. Rep. 176; *Buenz v. Cook*, 15 Col. 38; s. c., 24 Pac. Rep. 679. By-law delegating to manager full power to manage business, construed. *S. M. Co. v. S. & R. Co.*, 16 Col. 118; s. c., 26 Pac. Rep. 226. Courts will not, as a general rule, at the suit of a stockholder, interfere with internal management of corporation. *Miller v. Murray*, 17 Col. 408; s. c., 30 Pac. Rep. 46. It must appear that he cannot redress either through the managing body or the stockholders. *Id.* Rule in such cases different in State and Federal courts. *Id.* When redress should be brought through stockholders. *Id.* One who acts as agent of a corporation could not deny his official character. *Janet v. Nims*, 43 Pac. Rep. 147.]

§ 484. The stockholders of any corporation formed under the provisions of this act, or the directors or trustees, if the certificate of incorporation so provide, shall have power to make such prudential by-laws as they deem proper for the management of the affairs of the company not inconsistent with the laws

of this State, for the purpose of carrying on all kinds of business within the objects and purpose of such company.

By-laws shall provide for calling directors' meetings. § 493.

[All corporations created by special statutes have an authority and capacity to establish such rules and regulations as shall be necessary for the well ordering of the affairs thereof. *Tel. Co. v. Graham*, 1 Col. 185.]

§ 485. It shall not be lawful for such corporations to use any of their funds for the purchase of stock in their own company or corporation, except such as may be forfeited for the non-payment of assessments thereon, except as hereinafter provided.

[Corporation that contracts to purchase its own stock cannot be compelled to do so. *Talmon v. Mica Co.*, 22 N. W. Rep. 506.]

§ 486. Each stockholder shall be liable for the debts of the corporation to the extent of the amount that may be unpaid upon the stock held by him, to be collected in the manner herein provided. Whenever any action is brought to recover any indebtedness against the corporation, it shall be competent to proceed against any one or more stockholders at the same time, to the extent of the balance unpaid by such stockholders upon the stock owned by them respectively, whether called in or not, as in cases of garnishment.

See § 497, and cross-references, and § 490.

[Liability of stockholders of a de facto corporation. *Humphrey v. Mooney*, 5 Col. 283; see, also, § 473, note. Creditor may maintain an action at law under this statute. *Smith v. Londoner*, 5 Col. 365. And it makes no difference that such creditor is a stockholder, if his own stock is paid for in full. *Id.* Corporation not a necessary party. 5 Col. 366. Corresponding statute distinguished. *Id.* In paying a judgment under this section a defendant is liquidating his indebtedness to the corporation. 5 Col. 370. No element of partnership liability attaches. *Id.* Section referred to in *Taber v. Man. Co.*, 11 Col. 426; s. c., 18 Pac. Rep. 327. A joint action may be maintained against a corporation and owners of unpaid capital stock thereof. *Smith v. Ins. Co.*, 14 Fed. Rep. 399; 4 *McCrery*, 584. But this section does not give any authority for suing the corporation with the trustees in any cause of action arising under this section. *Id.* Extent of individual liability of officers and stockholders of banking corporation is the amount of the stock held by each. *Buenz v. Cook*, 15 Col. 38; s. c., 24 Pac. Rep. 679.]

§ 487. The president and a majority of the directors or trustees, after the payment of the last installment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the directors or trustees, and they shall record the same in the office of the secretary of State, and a copy in the office of the recorder of deeds of the



county wherein the business of said company is carried on.

See § 2577.

[This section made imperative. *Austin v. Berlin*, 13 Col. 200; s. c., 22 Pac. Rep. 433.]

§ 488. It shall be the duty of the directors or trustees of every corporation, except railroad and telegraph companies, to cause to be kept at its principal office or place of business in this State, correct books of account of all its business, and any stockholder in such corporation shall have the right, at all reasonable times, to inspect and examine all the books, accounts and papers of the corporation, and shall have the right as aforesaid to demand of any officer, clerk, cashier, or agent of any such corporation having in his control or custody any such books, accounts, or papers, as such stockholders may desire to examine or inspect; and upon such demand being made in writing, every such officer, clerk, cashier or agent shall be bound to produce such books, accounts and papers to such stockholder, and afford due opportunity to examine and inspect the same; and such stockholders shall have the right to take copies or make extracts therefrom, but shall not remove from the office of the corporation any such books, accounts and papers. In case of refusal or neglect, by any such officer, clerk, cashier or agent, to exhibit the same, or to allow the same to be inspected and copies or extracts to be taken therefrom by any stockholder making such request, or who shall secrete, conceal or destroy any books, accounts or papers, or who shall prevent, or endeavor to prevent, a full inspection of the same, shall be deemed guilty of a misdemeanor, and be liable to a penalty of two hundred dollars, or such less sum as a court or jury may find, to be recovered by action of debt, at suit of the person aggrieved, against the person offending, in the district court of the county where the principal office of such corporation is located.

Transfer-book of stock, etc. See § 508.

§ 489. All assessments or installments of the stock of any stock corporation, shall be levied by the directors or trustees in accordance with the provisions of the by-laws, except as hereinafter provided, but any assessments or installments required to be paid shall be levied pro rata upon all shares of such stock, except as hereinafter provided.

See § 480.

[The unpaid balance upon a stockholder's subscription is not primarily a legal debt due the corporation, and no cause of action can be maintained therefor in its name till the statutory demand has been made and the statutory period thereafter has expired. *Ins. Co. v. Tabor*, 16 Col. 531; s. c., 27 Pac. Rep. 890. But by proper proceedings in equity, the unpaid balance may be applied to the discharge of corporation debts. *Id.*]

§ 490. The directors or trustees of any corporation may purchase mines, manufactories and other property necessary for their business and issue stock to the amount of the value thereof in payment therefor; and the stock so issued shall be declared and taken to be full-paid stock and not liable to any further calls or assessments, except as hereinafter provided; neither shall the stockholders thereof be liable to any further payments under the provisions of section eleven (§ 486) of this act, but in all statements and reports of the company, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the facts.

Stock or bonds not to be issued except for value. § 618; Const., art. XV, § 9.

[Subscriptions to stock not necessarily to be paid in cash. Corporation may issue shares in payment for services rendered. *Arapahoe, etc., Co. v. Stevens*, 13 Col. 541; s. c., 22 Pac. Rep. 823. But shares must be issued either "for labor done, services performed, or money or property actually received" or the issue is unconstitutional and invalid. *Arkansas, etc., Co. v. F. L. & T. Co.*, 13 Col. 601; s. c., 22 Pac. Rep. 954.]

§ 491. Every such corporation shall annually, within sixty days from the first day of January, make a report, which shall state the amount of its capital and the proportion actually paid in, and the amount of existing debts; which report shall be signed by the president, and shall be verified by the oath of the president or secretary of said company, under its corporate seal, and filed in the office of the recorder of deeds of the county where the business of the company shall be carried on. And if any such corporation shall fail so to do, unless the capital stock of such corporation has been fully paid in and a certificate made and filed as provided in section twelve (§ 487) of this act, all the directors or trustees of the company shall be jointly and severally liable for all the debts of the company that shall be contracted during the year next preceding the time when such report should by this section have been made and filed, and until such report shall be made.

See §§ 481, 497. False report, liability for. § 494.

[This statute in its nature is penal; the liability is not founded upon contract, but arises from misconduct in office. *Gregory v. Bank*, 3 Col. 332. Necessary averments in a complaint under this section. See *Aufenger v. Pub. Co.*, 9 Col. 377; s. c., 12 Pac. Rep. 400. The individual liability of directors is not extended to those in no way chargeable with dereliction of duty. *Austin v. Berlin*, 13 Col. 200; s. c., 22 Pac. Rep. 433. Liability under this section. See *Schroers v. Fisk*, 10 Col. 609; s. c., 16 Pac. Rep. 285.

A joint action cannot be maintained against the officers and the corporation itself, under this section. *Smith v. Ins. Co.*, 14 Fed. Rep. 399. Complaint against officer under this section held insufficient on demurrer. *Mathews v. Patterson*, 16 Col. 215; s. c., 26 Pac. Rep. 812. A corporate creditor cannot waive a default by the directors in failing to file the statement required by law and avail himself of a similar default in the following year to prevent the running of the limita-

tion against his claim. *Fuel & Iron Co. v. Lenhart*, 41 Pac. Rep. 834. Above statute is penal in its nature, and, therefore, to be strictly construed. *Id.*

§ 492. If the directors, trustees or other officers or agents of any corporation shall declare and pay any dividend when such corporation is insolvent, or any dividend the payment of which would render it insolvent or would diminish the amount of its capital stock, all directors, trustees, agents or officers assenting thereto shall be jointly and severally liable for all debts of such corporation then existing, and for all that shall thereafter be contracted while the capital remains so diminished.

§ 493. The by-laws of every corporation shall provide for the calling of meetings of the directors or trustees, and when such directors or trustees shall be present at any meeting, however called or notified, or shall sign a written consent thereto, on the record of such meeting, the acts of such meeting shall be as valid as if called and notified; Provided, That unless it shall be stated in the certificate of incorporation that meetings of the directors or trustees may be held beyond the limits of this State, or unless such meeting was authorized or its acts ratified by a vote of a majority of the stockholders at a regular meeting, the action of any meeting held beyond the limits of this State shall be void.

By-laws. § 484.

[Legality or regularity of certificate of incorporation, which provides that the meetings of stockholders and directors shall be held outside the State where incorporated, cannot be attacked collaterally. *Humphreys v. Mooney*, 5 Col. 293.]

§ 494. If any certified report or statement made, or public notice given, by the officers of any corporation, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all damages arising therefrom.

§ 495. No person holding stock in any corporation as executor, administrator, conservator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such corporation, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, conservator, guardian or trustee shall be liable in like manner and to the same extent as a testator or intestate, or the ward or person interested in such trust funds would have been if he had been living, and had been competent to act, and held the stock in his own name.

Trust funds not to be invested in stocks. Const., art. V, § 36.

§ 496. Every executor, administrator, conservator, guardian or trustee shall represent the stock in his hands at all meetings of any such corporation, and may vote accordingly as a stockholder, and every person who shall pledge his stock may nevertheless represent the same at all meetings and vote accordingly.

Identical with Illinois statute. Ch. 32, § 24. Trust funds not to be invested in stocks. Const., art. V, § 36.

§ 497. If any corporation, or its authorized agent, shall do any act which shall subject it to a forfeiture of its charter or corporate powers, or shall allow any execution or decree of any court of record for a payment of money, after a demand made by the officers, to be returned "no property found," or to remain unsatisfied for ten days after such demand, or shall dissolve or cease doing business, leaving debts unpaid, suits in equity may be brought against all persons who were stockholders at the time, or liable in any way for the debts of the corporation, by joining the corporation in such suit, and each stockholder may be required to pay such debts or liabilities to the extent of the unpaid portion of his stock; and courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, to appoint a receiver therefor, who shall have authority by the name of the receiver of such corporation (giving the name), to sue in all courts, and to do all things necessary to closing up its affairs as commanded by the decree of the court.

Personal liability of stockholders. § 486. Of trustees on dissolution. § 619. Effect of dissolution. §§ 509, 619, 620. See act of 1891, at p. 27.

[A sovereignty conferring a franchise may at any time, and in its own way, inquire into the manner in which the franchise is used. *Road Co. v. Peo.*, 5 Col. 42. The State, through its courts, may waive a forfeiture of a charter, and it is generally its duty to do so where infractions are not willful. *Road Co. v. Peo.*, 5 Col. 46. It is a general rule that when the statute provides a remedy to test the right to exercise a franchise, it is exclusive of all other remedies. *R. R. Co. v. Peo.*, 5 Col. 60. Charter of banking corporation liable to forfeiture, when. *Peo. v. Bank*, 7 Col. 226; s. c., 3 Pac. Rep. 214. Courts have jurisdiction to appoint receiver, when. *Jones v. Bank*, 10 Col. 464; s. c., 17 Pac. Rep. 272. The appointment of a receiver does not dissolve corporation, either in law or in fact. *Id.* Nor does mere insolvency. *Id.* Courts of equity have no inherent power to dissolve a corporation in the absence of statutory provisions. *Id.* Surrender of franchises is not an official act, but to be effectual must be the act of the stockholders as such. *Id.* Assets of insolvent corporation constitute a trust fund for pro rata distribution among creditors, when. *Jones v. Bank*, 10 Col. 481; s. c., 17 Pac. Rep. 272; *Breene v. Bank*, 11 Col. 102; s. c., 17 Pac. Rep. 280. Insolvency alone does not prevent corporation from transacting business. *Breene v. Bank*, 11 Col. 99; s. c., 17 Pac. Rep. 280. Status of insolvent corporations discussed. *Breene v. Bank*, 11 Col. 97–102; s. c., 17 Pac. Rep. 280. Under this section each stockholder is liable and may be joined with the corporation in a suit for all

**Foreign Corporations.**

liabilities against it. *Tabor v. Mfg. Co.*, 11 Col. 426; s. c., 18 Pac. Rep. 537. The fiction of a body corporate, separate and distinct from its members is not recognized in equity. *Ark., etc., Co. v. F. L. & T. Co.*, 13 Col. 598; 22 Pac. Rep. 958.]

§ 498. It shall and may be lawful for any corporation created or existing under the laws of this State for the purpose, among others, of exercising its franchises or carrying on part of its business beyond the limits of this State, and in another State or Territory of the United States or elsewhere, to accept any law of such other State or Territory of the United States, or foreign State and government and to exercise within the territory of such other State or Territory or foreign State or government, all such authorities, powers, privileges, rights and franchises as may be by such laws conferred, subject to such duties, liabilities and restrictions as may by such laws be imposed.

[A corporation is resident only of the State which creates it. It cannot immigrate to another sovereignty, and is only permitted to do business in another State through comity. *Smith v. Pipe*, 3 Col. 388; *Utley v. L. M. Co.*, 4 id. 371.]

§ 499. (As amended April 8, 1893.) Foreign corporations shall, before they are authorized or permitted to do any business in this State, make and file a certificate, signed by the president and secretary of such corporation, duly acknowledged, with the secretary of State, and in the office of the recorder of deeds of the county in which such business is carried on, designating the principal place where the business of such corporation shall be carried on in this State, and an authorized agent or agents in this State residing at its principal place of business upon whom process may be served; and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon such corporations of like character organized under the general laws of this State, and shall have no other or greater powers. And no foreign or domestic corporation, established or maintained in any way for pecuniary profit of its stockholders or members, shall purchase or hold real estate in this State except as provided for in this act, and no corporation doing business in this State, incorporated under the laws of any other State, shall be permitted to mortgage, pledge or otherwise encumber its real or personal property situated in this State, to the injury or exclusion of any citizen, citizens or corporations of this State, who are creditors of such foreign corporation, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State, until all its

liabilities due to any person or corporation in this State at the time of recording such mortgage, have been paid and extinguished. Provided, however, That if any foreign corporation other than those expressly mentioned herein, intending or desiring to mortgage any or all of its property for any debt created or to be created in any other State, shall give notice of such intention or desire by publication for six (6) successive weeks prior thereto, in some daily or weekly newspaper printed within the county wherein the property so intended or desired to be mortgaged is situated, or if there be no such newspaper, by posting such notices in five (5) public places within such county, requesting all citizens and corporations of this State, having any claims or demands of any kind or nature whatsoever against the said foreign corporation, to file the same duly verified with the county clerk of the county in which such property so desired to be mortgaged is situated, on a date specified in such notice, which date shall be subsequent to the date of the last publication of such notice or in case of failure so to file such claim or demand, then and in such case, a mortgage given by such foreign corporation to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State, who shall fail to file his or its claim.

See Const., art. XV, § 10, and cross-references.

[Corporation has no legal existence beyond sovereignty of its creation, except by courtesy. *Cook v. Hager*, 3 Col. 388; *Utley v. L. M. Co.*, 4 id. 371. This section is prohibitory, but such corporation may sue or be sued even if the required certificate is not filed. *Tabor v. Manf. Co.*, 11 Col. 429; s. c., 18 Pac. Rep. 537; *Utley v. L. M. Co.*, supra. But, query, whether it may hold and enjoy property. 1d. There is nothing in the statutes requiring corporators and officers, any more than stockholders, to be residents of the State granting the charter. *Humphreys v. Mooney*, 5 Col. 292. This section referred to in *W. U. T. Co. v. Conant*, 11 Col. 112; s. c., 17 Pac. Rep. 167. Statute applicable and a sufficient answer to contract made before filing of certificate. *Man. Co. v. Ferguson*, 4 Fed. Rep. 498; s. c. reversed, 113 U. S. 727; s. c., 5 Sup. Ct. Rep. 739, and principles discussed at length.

A foreign corporation which fails to file the certificate required by statute may, nevertheless, sue for goods sold and delivered. *Fairbank, etc., Co. v. MacLeod*, 8 Col. App. 199; s. c., 45 Pac. Rep. 282. Contracts of foreign corporations, made without filing statutory certificates, held valid. *Rockford Ins. Co. v. Rogers*, 47 Pac. Rep. 848.]

§ 500. Every company incorporated under the laws of any foreign State or kingdom or of any State or Territory of the United States, beyond the limits of this State, and now or hereafter doing business within this State shall file in the office of the secretary of State a copy of their charter of incorporation; or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate and of such general incorporation law duly certified and authenticated by the proper author-

## Foreign corporations; legal proceedings — Stat., §§ 501-506.

ity of such foreign State, kingdom or Territory.

See § 499, and Const., art. XV, § 10, cross-references.

[Insurance companies are exempt from this section. L. of 1887, p. 290. A single purchase of machinery is not "doing business" within meaning of this section. *Iron Works v. Mining Co.*, 15 Col. 439; s. c., 25 Pac. Rep. 325; *Cooper Manf. Co. v. Ferguson*, 113 U. S. 727; s. c., 5 Sup. Ct. Rep. 739.]

§ 501. A failure to comply with the provisions of sections 23 (§ 499) and 24 (§ 500) of this act shall render each and every officer, agent and stockholder of any such corporation, so failing herein, jointly and severally personally liable on any and all contracts of such company made within this State during the time that such corporation is in default.

[A failure to so file is not ground for a forfeiture of the charter. *Ins. Co. v. Overholt*, 4 Dill (Col.), 288. The penalty prescribed in this section does not relieve corporation from doing all things required of it by this statute. *Utley v. L. M. Co.*, 4 Col. 372.]

§ 502. The several certificates, statutes and charters mentioned in section twenty-four (24) of this act, (§ 500), shall be by the secretary of State filed and preserved in his office as a part of the record thereof, and he shall be entitled to a fee of fifty cents for receiving and filing every such certificate and statute. Copies of such charters, statutes and certificates, duly certified by the secretary of State under his seal of office, shall be received in all courts of this State, as sufficient evidence of the corporate character of such incorporations, and of all their powers, duties and liabilities, and the originals thereof may in like manner be used in evidence of these matters with like effect.

See Const., art XV, § 10, and cross-references.

### Legal Proceedings by and against Corporations.

§ 503. Suits may be instituted and prosecuted by and against any corporation formed or recognized [organized] under this act, in the same manner and in like cases as natural persons.

Proceedings against a foreign corporation to forfeit lands. § 101. Service of process on corporations. § 506; Acts of 1891, at pp. 28, 29. Publication of. Act of 1895, at p. 29. Corporation may sue its members. § 621. And is subject to garnishment. § 2707. Pending suits not affected by reorganization. § 639. Venue of actions against corporations. § 506. Corporation may sue and be sued. § 476. Receivers may sue. § 497.

[A defendant sued as a corporation cannot deny its existence, either in abatement or in bar. *Good v. Martin*, 1 Col. 169; *D. & S. Ry. Co. v. D. C.*

*Ry. Co.*, 2 id. 679; *Tel. Co. v. Eyser*, id. 141. And plea of null corporation is a plea in bar. *Tel. Co. v. Eyser*, 2 Col. 158. Corporation is liable for its torts. *Tel. Co. v. Eyser*, 2 Col. 141; *R. R. Co. v. Ogden*, 3 id. 503. Contributory negligence no defense, when. *Tel. Co. v. Eyser*, supra. Corporation may be sued for specific performance of contract. *Prime v. Houghton*, 6 Col. 324. And for money had and received. *Manvill v. Mining Co.*, 17 Fed. Rep. 425. Ultra vires no defense, when. *Ins. Co. v. McClelland*, 9 Col. 21; s. c., 9 Pac. Rep. 771. Corporation cannot maintain suit for equitable relief, except as the representative of the stockholders. *Ark., etc., Co. v. F. L. & T. Co.*, 13 Col. 598; 22 Pac. Rep. 958. Suit is brought without authority when not ordered by majority of trustees. *Id.* Books and records of corporation as evidence. *Mining Co. v. Bank*, 2 Col. 575; *Byers v. Hussey*, 4 id. 521.

Corporation created by a territorial legislature cannot sue as a federal corporation in the United States courts. *Express Co. v. Ry. Co.*, 4 McCrary, 79; s. c., 16 Fed. Rep. 712. And the mere fact that a suit is by or against a federal corporation is not, of itself, sufficient to confer jurisdiction upon a federal court. *Id.* Suit by stockholders against corporation; prerequisites. *Foot v. Mining Co.*, 17 Fed. Rep. 46; s. c., 5 McCrary, 251; *Hawes v. Oakland*, 104 U. S. 450. A corporation sued by a national bank for money loaned it, cannot set up as a bar that they exceeded in amount one-tenth of its capital stock actually paid in. (*See R. S. of U. S.*, § 5200.) *Mining Co. v. Bank*, 96 U. S. 640. A single transaction may subject foreign corporation to jurisdiction of State courts. *Iron Works v. Mining Co.*, 15 Col. 499; s. c., 25 Pac. Rep. 325.

In an action by a stockholder against an officer to redress an injury against the corporation, the pleadings must show a demand on the corporate authorities to sue, or an excuse therefor. *Beshoar v. Chappell*, 40 Pac. Rep. 244.]

§ 504. The certified copy of any articles of incorporation and changes thereof together with all indorsements therein (thereon) under the great seal of the State of Colorado, shall be taken and received in all courts and places as prima facie evidence of the facts therein stated.

See §§ 475, 502.

§ 505. Nothing in this act contained shall be construed to allow the construction of any street or other railroad, or other structure or sub-structure, for any purpose on, below or elevated above the surface of the ground of any street or alley within the limits of any such city or town, by any corporation, person or persons whomsoever, without the consent of the local authorities of such city or town; but no such consent, however enacted or expressed, on any consideration whatever, shall operate to relieve or protect any person, persons, or corporation or corporations constructing any such street or other railroad, or structure or sub-structure, as aforesaid, against any claim for damages to private property, which otherwise, without such consent, might be lawfully maintained against such person or persons, corporation or corporations.

See Const., art. II, § 15.

§ 506. In suits against any corporation, summons shall be served in that county

Statement by officers; record of stockholders — Stat., §§ 507, 508.

where the principal office of the corporation is kept or its principal business carried on, by delivering a copy to the president thereof, if he may be found in said county, but if he is absent therefrom, then the summons shall be served in like manner in such county, on either the vice-president, secretary, treasurer, cashier, general agent, general superintendent, or stockholder of said corporation, within such time and under such rules as are now provided by law for the service of such process in suits against real persons, and if no such person can be found in the county where the principal office of the corporation is kept, or in the county where its principal business is carried on, to serve such process upon, a summons may issue from either one of such counties, directed to the sheriff of any county in this State where any such person may be found, and served with process. If such corporation keeps no principal office in any county, and there is no county in which the principal business of such corporation is carried on, then suits may be brought against it in any county where the above-mentioned officers, or any, or either of them, may be found. Provided, That the plaintiff may, in all cases, bring his action in the county where the cause of action accrued.

See acts of 1891, at pp. 28, 29. See § 503, and cross-references.

[Venue of action to recover for baggage lost, in the county to which it was checked. *R. R. Co. v. Roberts*, 6 Col. 334. This section construed. *Construction Co. v. Stout*, 8 Col. 62; s. c., 5 Pac. Rep. 627; *Tel. Co. v. Conant*, 11 Col. 113; s. c., 17 Pac. Rep. 107; see, also, *Ganebin v. Phelan*, 5 Col. 84; *Mining Co. v. Lightbourne*, 10 id. 430; s. c., 15 Pac. Rep. 785; *Tabor v. Manf. Co.*, 11 Col. 426; s. c., 18 Pac. Rep. 537. Confession of judgment by corporation. *White v. Crow*, 17 Fed. Rep. 98; s. c., 5 McCrary, 315. Service upon vice-president is sufficient, even though return does not show that president could not be found in the county. *Mining Co. v. Frost*, 15 Col. 310; s. c., 25 Pac. Rep. 506. Service of process upon stockholder of foreign corporation. See *Iron Works v. Mining Co.*, 15 Col. 499; s. c., 25 Pac. Rep. 325.]

§ 507. Whenever any person or persons owning fifteen (15) per cent. of the capital stock of any corporation formed under this act, shall present a written request to the secretary, cashier or treasurer thereof, that they desire a statement of the affairs of such corporation, it shall be the duty of such secretary, cashier or treasurer, to make a statement of the affairs of said company, under oath, embracing a particular account of all its assets and liabilities in detail, and to deliver such statement to the persons who presented the said written request to said secretary or treasurer, within twenty days after such presentation; and shall also, at the same time, place and keep on file in the office of the company, for six months thereafter, a copy of such statement, which shall at all times, during business hours, be exhibited to any stockholder of said corpora-

tion demanding an examination thereof; such officer, however, shall not be required to make such statement, in the manner aforesaid, oftener than once in six months.

§ 508. (As amended April 14, 1893.) It shall be the duty of the directors or trustees of every such corporation, except railroad or telegraph corporations, to cause a book to be kept by the secretary or clerk thereof, containing the names of all persons alphabetically arranged, who are, or shall within one year have been stockholders of such corporation, and showing their place of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares, and the time when they ceased to be such stockholders, and the amount of stock actually paid in, and what proportion has been paid in cash; which book shall, during the usual business hours of the day, be open for the inspection of the stockholders and creditors of the company, and their personal representatives, at the office or principal place of business of such company, in the county where its business operations shall be located; and any and every such stockholder, creditor or representative, shall have a right to make extracts from such books, and no transfer of stock shall be valid for any purpose whatever except to render the person to whom it shall be transferred, liable for the debts of the company, according to the provisions of this act, unless it shall have been entered therein, as required by this section, within sixty days from the date of such transfer, by an entry showing to and from whom transferred; or, in case of the pledge of any such stock, a memorandum be made upon the books of the said company, showing to whom and for what amount the stock has been pledged. Such books shall be presumptive evidence of the facts therein stated in any suit or proceedings against such corporation, or against any one or more stockholders. Every officer or agent of any such company, who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts taken therefrom, shall be, as provided by this section, deemed guilty of a misdemeanor, and the corporation shall forfeit and pay to the party injured a penalty of fifty (50) dollars, for every such neglect or refusal, and all the damages resulting therefrom.

See § 488.

[Any transfer of stock by a corporation upon its books, in the absence of the original certificate, is made at its peril. *Ditch Co. v. Elliott*, 10 Col. 327; s. c., 15 Pac. Rep. 691. Certificates of stock are negotiable and pass by indorsement, and subject to same rules as negotiable instruments. *Id.* This section takes from the owner of the stock the right to transfer it in accordance with the rules of common law. *Conway v. St. John*, 14 Col. 30; 23 Pac. Rep. 170. Under the laws of this State, title to stock in a corporation, as against creditors, can only pass by transfer on books of company. *Id.* In a suit to compel offi-

cers of a corporation to register a transfer of corporate stock, the corporation is not a necessary party. *Gould v. Head*, 41 Fed. Rep. 240. There must be at least a substantial compliance with the provisions of this section, in order to protect the property against future assignments or levies. *Weber v. Bullock*, 19 Col. 214; s. c., 35 Pac. Rep. 183. Notwithstanding a compliance with this section is essential to transfer of legal title to stock, court of equity will protect equitable title of an assignment. *Id.*

Under above section, a transfer of stock unrecorded after sixty days is not good against the attaching creditors of the assignor. *Bank v. Hastings*, 42 Pac. Rep. 691.]

§ 509. The dissolution for any cause whatever of corporations created as aforesaid, shall not take away or impair any remedy given against such corporations, its stockholders, or officers, for any liabilities incurred previous to its dissolution.

See §§ 497, 619, 620, and Act of 1891, at p. 27.

### General Provisions.

§ 616. If any corporation formed under this act for the purposes of constructing a road, ditch, bridge, ferry, tunnel, telegraph or railroad company, shall be unable to agree with the owner for the purchase of any real estate required for the purposes of any such corporation or company, or the transaction of the business of the same, or for right of way, or any other lawful purpose, connected with, or necessary to the operations of such company, such corporations may acquire such title in the manner provided by law.

See Const., art. II, § 15, note, and cross-references; art. XV, § 4.

[Until the way is located, no right of way can be said to attach to any particular land. *Riddall v. Road Co.*, 5 Col. 230. As to right of way through cañon or pass too narrow to permit passage of two roads, see *D. & R. G. Ry. Co. v. C. C. & S. J. Ry. Co.*, 17 Fed. Rep. 867; *Ry. Co. v. Alling*, 99 U. S. 463.]

§ 617. Any corporation formed under the provisions of this act, for the purpose of constructing a road, ditch, tunnel or railroad, may cause such examination and survey as may be necessary to the selection of the most advantageous route, and for such purpose, by its officers, agents or servants, may enter upon the lands or any person or corporation, but subject to liability for all actual damages which shall be occasioned thereby.

See Const., art. II, § 15, note, and cross-references.

§ 618. No corporation shall issue stock or bonds except for labor done, services performed, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void.

See Const., art. XV, § 9; Statutes, § 490.

[Issue of stock in violation of this section is unconstitutional and ipso facto invalid. *Ark.*, etc., *Co. v. F. L. & T. Co.*, 13 Col. 601; s. c., 22 Pac. Rep. 954. Shares may be issued in payment for services rendered in carrying on the corporate business. *Arapahoe, etc., Co. v. Stevens*, 13 Col. 541; s. c., 22 Pac. Rep. 823.]

§ 619. Upon dissolution by expiration of its charter or otherwise of any corporation now existing or which may hereafter be formed, unless some other person or persons be appointed by some court of competent jurisdiction, the board of directors or trustees of such corporation or the managers of the corporate affairs, by whatever name known, acting last before the time of their dissolution, and the survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same; to sue for and collect the debts and moneys due to the corporation, or to compound and settle any claims thereof, as they may deem best; to have, hold, reserve, sell and dispose of property real and personal, of any such corporation dissolved; to adjust and pay all the debts of the corporation dissolved; to divide the residue of the moneys and property belonging to the corporation dissolved, after payment of debts and the necessary and reasonable expenses, among the stockholders holding stock in such corporation, in proportion to the amount paid upon stock of each stockholder. All such trustees shall be jointly and severally liable to the creditors and stockholder(s) of such corporation dissolved, to the extent of the property and effects which shall come into their hands or possession of any of them, for a proper and faithful discharge of the duties of said trust and disposal of said property and effects.

See §§ 497, 509.

[Upon dissolution of corporation the right of way for a ditch would not revert to the servient estate, but would pass as other property under this section. *Bailey v. Milling Co.*, 12 Col. 230; s. c., 21 Pac. Rep. 35.]

§ 620. The title to all real and personal estate belonging to any such corporation shall, immediately upon the dissolution thereof, unless by a decree of court of competent jurisdiction, declaring such dissolution, it is otherwise ordered, pass to, and rest (vest) in such trustees, directors or managers, and an action at law may be maintained by such trustees, or directors, or the survivors of them, in their own names by the style of the trustees of such corporation dissolved naming it, for the recovery of all such property, or of any damage done to the same, or for the recovery of any debts due such corporation dissolved.

See §§ 497, 509.

§ 621. All bodies corporate, by the appropriate action, may sue for, recover and receive from their respective members all arrears or other debts, dues and other demands which are now or hereafter may be owing to them in like mode, manner and form, as they might sue for, recover and receive the same from any person who might not be one of their body, any law, usage or custom to the contrary thereof notwithstanding.

See §§ 450, 503, and cross-references.

§ 622. It shall be lawful for any corporation to convey land by deed, sealed with the common seal of said corporation, and signed by the president or the presiding member of said corporation; and such deed when acknowledged by such officer to be the act of the corporation prescribed for other conveyances for lands, shall be recorded in the recorder's office of the county where the land lies, in like manner with other deeds.

See §§ 427, 453, 476, 623.

§ 623. Corporations, domestic and foreign, may, by written powers executed in the manner provided for the conveyance of real estate by corporations, appoint agents or attorneys in fact to convey their real estate, and all conveyances executed by such agents or attorneys in fact in the name of the corporation, shall pass the legal title of such corporation to the real estate thereby conveyed, as effectually as if such conveyances had been executed by the corporation in the manner provided by law for the conveyance of real estate by corporations; and it shall not be necessary to affix the seal of the corporation to any conveyance so executed by such agent or attorney in fact.

As to holding and conveying real estate, see §§ 476, 622, 101-103.

§ 624. No corporation, association or society, for any purpose authorized by this act, shall be formed under any other act.

§ 625. Whenever the board of directors, managers or trustees of any corporation existing by virtue of any general law of the Territory of Colorado, or the laws of this State, or any corporation hereafter organized by virtue of any law of this State, may desire to change the name, to change the place of business, to increase or decrease the capital stock, to increase or decrease the number of directors, managers or trustees, or to consolidate said corporation with any other corporation or corporations now existing, or which may hereafter be organized, they may call a special meeting of the stockholders of such corporation, for the purpose of submitting to a vote of the stockholders the question of such change of name, change of place of business, increase or decrease

of number of directors, managers or trustees, increase or decrease of capital stock, or consolidation with some other corporation, as the case may be; Provided, That in changing the name of any corporation, under the provisions hereof, no name shall be assumed or adopted by any corporation similar to, or liable to be mistaken for, the name of any other corporation, organized under the laws of this State, or of the laws of the Territory of Colorado, and that in no case shall the capital stock be diminished to the prejudice of the creditors of such corporation, or the number of directors, managers or trustees be reduced to less than three (except in the cases of incorporation for the purpose of construction of railroad, to not less than five) or increase to more than thirteen; And Provided further, That the provisions of this act, in reference to the consolidation of corporations, shall only apply to corporations of the same kind, engaged in the same general business, and carrying on their business in the same vicinity.

See § 599, and Act of 1891, at pp. 27, 28.

[Section referred to in Col., etc., Co. v. Ry. Co., 41 Fed. Rep. 304.]

§ 626. Such special meeting shall be called by delivering personally, or depositing in the post-office, at least thirty days before the time fixed for such meeting, a notice properly addressed to each stockholder, signed by the president or secretary, stating the time and object of such meeting.

See Act of 1891, at pp. 27, 28.

§ 627. At any such meeting, stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each share of stock held by him; and votes representing two-thirds of all the stock of the corporation shall be necessary for the adoption of the proposed change of name or place of business, number of directors or trustees, amount of capital stock, or consolidation with some other company or companies.

§ 628. Any corporation, existing for any of the purposes enumerated in this act, may consolidate by uniting the properties and concerns of two or more corporations in one organization, having all the rights and privileges of this act, and amenable to all its liabilities, by complying with all the requirements herein provided, to wit: Each corporation desiring to consolidate, each with the other, may, by its trustees or directors, or by the stockholders representing a majority of the stock, call a meeting of the stockholders, as provided in section ninety-five of this act (§ 583), and vote upon the proposition of consolidation that shall be presented in writing, at such meeting, when, if by a vote of at least three-fourths ( $\frac{3}{4}$ ) of the stock of

each company severally, the proposition shall be approved, the trustees or directors shall thereupon elect their proportion of the directors, less one, that are to manage the affairs of the consolidated company, and upon the joint meeting of the directors so elected, the said directors shall elect one of the stockholders to be a director and act with them, and they jointly shall constitute a board of directors, who shall organize by electing their officers in accordance with law. They shall prepare a certificate of incorporation setting forth the facts of the consolidation, together with all other matters required in original certificates of incorporation, naming therein the directors elected as herein provided, who shall serve for one year, and until their successors are elected; and the said certificate of incorporation shall be signed and acknowledged by at least three of the stockholders of each of the consolidating companies. The certificate so signed and acknowledged shall be filed for record in the office of the secretary of State, and in each of the offices of the county recorders where the certificate of either of the companies so consolidated are on file. The trustees or directors of the consolidating companies shall, each by proper conveyance, convey to the consolidated company the property and effects of such companies, and shall deposit with the directors of the consolidated company all the transfer books, seals, books and papers of each of the companies so uniting. The directors of the consolidated corporation shall call in all the stock of each of the companies forming a part of the consolidation, cancel the same, and issue in lieu thereof the stock of the new organization in proportion of value of the old to the new, as provided in the plan of consolidation: Provided, No stock shall be issued in lieu of old stock except upon the presentation of the old stock or due proof of the loss or destruction of the old certificates of stock, and then only to the parties entitled thereto. When the companies have consolidated as herein provided, the stock of the companies so consolidated shall thereafter represent only its interest in the new organization, whether surrendered and exchanged or not, and shall be subject to all the liabilities of assessment and forfeiture that may pertain to the stock of the consolidated company, and the consolidated company shall be responsible for and shall assume and pay all the just liabilities of each of the companies so consolidated; any any corporation desiring to change its name, place of business, number of directors or trustees, or amount of capital stock, shall submit the question at an annual meeting, or a special meeting called for that purpose, in accordance with the provisions of section ninety-five (§ 583) if, at any such meeting, three-fourths of all the stock of such corporation shall vote in favor of the proposed change, or changes, a certificate setting forth

the fact, or facts, verified by the affidavit of the president of said corporation, and having the seal of the corporation affixed, shall be filed for record with the secretary of State and the recorder of the county where the principal business office of said corporation is located.

§ 629. Such corporation shall, upon the filing of said certificates, cause to be published in some newspaper, in or nearest the county in which their principal office is located, a notice of such changes of organization, for three successive weeks.

§ 630. Such change of name, place of business, increase or decrease of capital stock, increase or decrease of number of directors, managers or trustees, or consolidation of one corporation with another or with others, shall not affect suits pending in which such corporation or corporations shall be parties; nor shall such change affect causes of action, nor the rights of persons in any particular; nor shall suits brought against such corporation by its former name be abated.

[Section referred to in *Col., etc., Co. v. Ry. Co.*, 41 Fed. Rep. 304.]

§ 633. Any corporation, company or body politic heretofore formed or organized and existing under any special act of the legislative assembly of the Territory of Colorado, or under any of the general laws thereof, may come under and avail themselves of the privileges and provisions of this act, whenever any such company, corporation, or body politic shall file in the office of the secretary of State, and in the office of the recorder of deeds in the county or counties where such company, corporation or body politic is doing business, a certificate in writing, signed by the president and attested by the secretary of such company, corporation, or body politic, accepting the provisions of this act, and the questions of acceptance shall be adopted by a vote of two-thirds of all the stockholders of said company, corporation, or body politic, expressed at a regular meeting of such company, corporation, or body politic, or at a meeting held for that purpose, which certificate shall express such vote.

See Const., art. XV, § 1.

§ 634. The general assembly may, at any time, alter, amend, or repeal this act, and shall at all times have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding on any and all corporations formed under the provisions of this act. And provided, further, That this act shall not be held to revive or extend any private charter or law, heretofore granted or passed concerning any corporation.

See Const., art. XV, § 3; art. II, § 11.

[A legislature cannot bind succeeding legislatures to a particular mode of repeal. *Gregory v. Bank*, 3 Col. 336.]



General provisions; criminal code — Stat., §§ 635, 1295, 1360, 1389, 1390.

§ 635. The provisions of this act shall not in any manner impair the rights or lessen the liabilities of corporations now in existence and heretofore created under the laws of the Territory of Colorado; but such corporations are hereby recognized, and their incorporation confirmed; but nothing in this section shall be so construed as to relieve such corporations from hereafter complying with the provisions of this act, in all matters relating to the conduct, control and management of any such corporation, or any of the affairs of such corporation.

[This section preserves all rights that accrued under former laws, and was not intended to interfere with actions pending for enforcement of rights alleged to have accrued under former acts. *Smith v. Londoner*, 5 Col. 371.]

## CHAPTER XXXVI.

### Criminal Code.

#### DIVISION VIII. OFFENSES AGAINST PUBLIC JUSTICE.

##### 5. CONSPIRACY.

Sec. 1295. Not unlawful to combine to secure employment, compensation, etc. *Proviso.*

#### DIVISION X. OFFENSES AGAINST PUBLIC MORALITY.

##### 7. OTHER OFFENSES.

Sec. 1360. Corporations not to emit bills of credit.

#### DIVISION XII. OFFENSES BY CHEATS AND SWINDLERS.

Sec. 1389. Officer of corporation signing fraudulent certificate or transfer.  
1390. Corporation officer issuing, selling, transferring stock fraudulently.

§ 1295. It shall not be unlawful for any two or more persons to unite, or combine, or agree in any manner, to advise or encourage, by peaceable means, any person or persons to enter into any combination in relation to entering into or remaining in the employment of person, persons or corporation, or in relation to the amount of wages or compensation to be paid for labor, or for the purpose of regulating the hours of labor, or for the procuring of fair and just treatment from employes, or for the purpose of aiding and protecting their welfare and interests in any other manner not in violation of the Constitution of this State or the laws made in pursuance thereof: *Provided*, That this act shall not be so construed as to permit two or more persons, by threats of either bodily or financial injury, or by any display of force, to prevent or intimidate any other person from continuing in such employment as he may see fit, or to boycott or intimidate any employer of labor.

§ 1360. If any person, number of persons or corporation in this State, without special leave from the legislative assembly, shall emit or utter any bill of credit, make, sign, draw or indorse any bond, promissory note, or writing, bill of exchange or order, to be used as a general circulating medium, and in lieu of money or other currency, every such person or persons, or members of such corporation assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding five hundred dollars, or be imprisoned not exceeding one year.

[Section referred to as silent regarding place of imprisonment. *Semble*, it would be in county jail. *Brooks v. People*, 14 Col. 416; s. c., 24 Pac. Rep. 554.]

§ 1389. Every president, cashier, treasurer, secretary or other officer, and every agent of any bank, railroad, manufacturing or other corporation, who shall wilfully and designedly sign with intent (to) issue, sell, pledge or cause to be issued, sold or pledged, any false, fraudulent or simulated certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, for the signing, issuing, selling, pledging of which such president, cashier, treasurer, or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, or by some amendment thereof, shall be adjudged guilty of felony; and every such person or persons shall be liable to indictment, and on conviction shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

§ 1390. Every president, cashier, treasurer, secretary or other officer, and every agent, attorney, servant, or employe of any bank, railroad, manufacturing or other corporation, and every other person who shall knowingly and designedly, or with intent to defraud any person or persons, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, transferred, assigned or pledged, any false, fraudulent or simulated certificate or other evidence of ownership, or of any share or shares of the capital stock of any bank, railroad, manufacturing or other corporation: every person so issuing, selling, transferring, assigning or pledging, or causing the same to be done, shall be adjudged guilty of felony, and shall be liable to indictment, and on conviction shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

Fees and salaries; judgments and executions — Stat., §§ 1868-1870, 2576-2578.

## CHAPTER L.

### Fees and Salaries.

#### DIVISION II. FEES OF STATE OFFICERS.

Sec. 1868. Secretary of State — corporation fees.  
1869. Repealing act.  
1870. Not to apply to companies already organized. Exception.

§ 1868. Every corporation, joint-stock company or association, incorporated by or under any general or special law of this State, or by or under any general or special law of any foreign State or kingdom, or of any State or Territory of the United States beyond the limits of this State, having capital stock divided into shares, shall pay to the secretary of State, for the use of the State, a fee of ten dollars, in case the capital stock which said corporation, joint-stock company or association, is authorized to have, does not exceed one hundred thousand dollars; but, in case the capital stock thereof is in excess of one hundred thousand dollars, the secretary of State shall collect the further sum of ten (10) cents on each and every thousand dollars of such excess, and a like fee of ten cents on each thousand of the amount of each subsequent increase of stock. The said fee shall be due and payable upon the filing of the certificate of incorporation, articles of association, or charter of said corporation, joint-stock company or association, shall have or exercise any corporate powers or be permitted to do any business in this State until the said fee shall have been paid; and the secretary of State shall not file any certificate of incorporation, articles of association, charter or certificate of the increase of capital stock, or certify or give any certificate to any such corporation, joint-stock company or association, until said fee shall have been paid to him. But this act shall not apply to corporations not for pecuniary profit, or corporations organized for religious, educational or benevolent purposes.

[I. L. 1885, p. 153, repealed by section 1869, which required that the same amounts be paid to the secretary of State, "upon the issuing of the certificate," etc., as required by this section to be paid upon filing the certificate of incorporation, was held to be a valid law, and using the word "issuing" instead of "filing" did not invalidate it, and the fees required could be collected. *Edwards v. D. & R. C. R. Co.*, 13 Col. 59 (1889); s. c., 21 Pac. Rep. 1011.]

See note to § 1868.

§ 1869. An act entitled an act to amend chapter nineteen, of the general laws of Colorado, entitled, "An act to provide for the formation of corporations," approved April 10, 1885, is hereby repealed.

§ 1870. This act shall not apply to any corporation, company or association which has filed its certificate of incorporation, articles of incorporation or charter prior to the passage of this act, except when it may hereafter file a certificate of increase of stock.

## CHAPTER LXXII.

### Judgments and Executions.

#### DIVISION IX. PROPERTY SUBJECT TO LEVY.

Sec. 2576. Shares of stock may be levied upon under execution or writ of attachment.  
2577. Duty of president to furnish number of shares held by defendant.  
2578. Levy on shares, how made.  
2579. Shares attached held subject to judgment.  
2580. Certificate of sale of stock — copy left with company officers.  
2581. Purchaser of shares, legal owner — rights.

§ 2576. Rights and shares of stock in any incorporated company owned or held by any defendant in execution, or by any person in trust for or to the use of any defendant in execution, may be levied upon under any execution or writ of attachment, and may be sold under any execution, in the manner hereinafter provided.

Shares of stock are personalty. § 480. And may be attached. § 2706.

[Section applies as well to attachments issuing out of a justice's court as a court of record. *Conway v. St. John*, 14 Col. 34; s. c., 23 Pac. Rep. 171. Capital stock in ditch companies is personal property and subject to execution and sale the same as other personal property. *Mercantile Co. v. Davis*, 18 Col. 93; s. c., 31 Pac. Rep. 495.]

§ 2577. When any execution or writ of attachment shall be issued against any person being the owner of any shares or stock in any incorporated company, or for whom or to whose use any shares or stock in any incorporated company are held by any person other than such defendant, it shall be the duty of the president, cashier, secretary or chief clerk of such incorporated company, upon the request of the officer having such execution or writ of attachment, to furnish him a certificate under his hand, stating the number of rights or shares which the defendant holds, or which are held in trust for such defendant, or to his use, in the stock of such incorporated company.

See last section, note.

§ 2578. Any officer, upon obtaining information in the manner provided in the last section, or otherwise, that a defendant in any execution or writ of attachment held by him, owns or holds any rights or shares in the stock of any incorporated company, or that such rights or shares are owned or held by any other person in trust for, or to the use of such defendant, may make a levy of such execution or writ of attachment on such rights or shares, by leaving a true copy of such writ with the president, secretary, cashier or chief clerk of such incorporated company; and, if there be no such officer, then with some other officer of such incorporated

Execution and attachment; public health — Stat., §§ 2579-2581, 2700, 2706, 2707, 3604, 3605.

company, with a certificate of the officer making the levy, setting forth that he levies upon and takes in execution or attachment such rights or shares to satisfy such execution or attachment.

See § 2576, note.

§ 2579. Rights or shares in the stock of any incorporated company levied upon by virtue of any writ of attachment, shall be held subject to the judgment rendered in the action in which such writ is issued, and whenever any execution shall be levied upon any such rights or shares, the same shall be sold in like manner as personal property is, by existing law, provided to be sold.

See § 2576, note.

§ 2580. It shall be the duty of every officer who shall sell any rights or shares of stock in any incorporated company, under an execution, to execute to the purchaser thereof a certificate in writing, reciting the sale and payment of the consideration, and conveying to the purchaser such rights and shares, and such officer shall also leave with the president, secretary, cashier or chief clerk, or if there be none, with any other officer of such incorporated company, a true copy of such certificate; and thereupon it shall be the duty of the officer, clerk, or other person having charge of the books of such incorporated company, to make such entries in the books of such company as may be necessary to vest the legal and equitable title to such rights or shares of stock in the purchaser of the same.

§ 2581. Every purchaser of rights or shares of stock in any incorporated company, at any sale thereof made by any officer, upon receiving a certificate of the sale thereof as provided in the last section, shall be deemed and held to be the legal and equitable owner of such rights or shares of stock, and he shall be and become entitled to all dividends thereon, and to the same rights and privileges as a member of such incorporated company as the defendant in execution was theretofore entitled to, notwithstanding such rights and shares of stock may not have been transferred upon the books of such company.

#### CHAPTER LXXIV.

##### Justices and Constables.

#### DIVISION V. ATTACHMENTS AND GARNISHMENTS.

Sec. 2700. Affidavit for attachment.  
2706. Shares of stock are subject to attachment.

2707. Corporations liable to garnishment.

§ 2700. If any creditor, or credible person for him, shall make and file with any justice of the peace his affidavit, setting forth that the defendant in such affidavit named is

justly indebted to such creditor, in a sum of money not exceeding three hundred dollars, upon a contract expressed or implied, stating the amount of such indebtedness, as near as may be, and shall also allege any one or more of the following grounds of attachment:

First. That the said debtor is a foreign corporation.

Second. That the said debtor is not a resident of this State.

\* \* \* \* \*

§ 2706. The rights, shares and interest which the defendant may have in any corporation, joint-stock company or partnership, together with the interests and profits thereon, as well as all debts due the defendant from any person, shall be subject to be taken by virtue of the writ of attachment, and if judgment be recovered may be sold to satisfy the judgment and execution.

See §§ 2576-81.

[See Conway v. St. John, 14 Col. 34; 23 Pac. Rep. 171.]

§ 2707. (Every corporation other than municipal liable to garnishment.)

#### CHAPTER CI.

##### Public Health.

#### DIVISION IV. TO PROTECT FEMALE EMPLOYEES.

Sec. 3604. Seats for female employees.  
3605. Penalty.

§ 3604. Every person, corporation or company employing females in any manufacturing, mechanical or mercantile establishments in this State, shall provide suitable seats for the use of the females so employed, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed.

§ 3605. Any person, corporation or company violating any of the provisions of this act, shall be punished by fine of not less than ten dollars nor more than thirty dollars for each offense.

#### CHAPTER CVII.

##### Revenue.

#### DIVISION I. GENERAL PROVISIONS.

Sec. 3781. Assessments upon corporate stock.

#### DIVISION II. ASSESSMENTS.

##### 1. PERSONS.

Sec. 3783. Property listed, by whom.  
3789. Deductions, none on account of outstanding subscriptions to corporate stock.  
3791. Value of stock to be listed.

**DIVISION III. COLLECTION OF TAXES.**

Sec. 3861. Officers of corporation to furnish names of shareholders.  
 3862. Violation of preceding section, penalty.

§ 3781. \* \* \* There shall be levied and assessed by the State, county and municipal authorities in this State, upon all bank stock, or stock in any moneyed corporation of loan or discount, on each share thereof owned by any individual, body corporate, corporation or society, a sum equal to but not greater in proportion to the value thereof than is levied or assessed upon other moneyed capital or personal property in the hands of or owned by individuals in this State.

§ 3783. \* \* \* The property of persons or corporations whose assets are in the hands of receivers, shall be listed by such receivers; of a body corporate, company, society or partnership, by its principal accounting officer, agent or partner; \* \* \*

See Const., art. X, § 9.

§ 3789. In making up the amount of credits which any person is required to list, he will be entitled to deduct from their (the) gross amount the amount of all bona fide debts owing by him; \* \* \* but \* \* \* no person will be entitled to a deduction on account of \* \* \* a subscription to or installment payable on the capital stock of any company or incorporation, \* \* \*

§ 3791. (Full number of shares of bank stock and value of stock or share in any other corporation or company to be listed for taxation.)

[Section referred to. Peo. v. Lothrop, 3 Col. 464.]

§ 3861. The president, treasurer, cashier, secretary, or chief clerk of any corporation, the shares of which are taxable by law, at the request of the county treasurer shall give him a certificate under his hand, showing the number and amount of shares held in the stock of such corporation, the names of the holders and the incumbrances thereon, so far as to him known; and such treasurer, in default of payment by the corporation of the taxes due thereon as required by law, shall distrain, seize and sell the same, and the purchaser thereof shall be admitted to all the rights, powers and privileges that the holders of such shares had at the time of seizing the same, and shall be entered by such corporation on their books as the owner of such shares.

§ 3862. If any corporation, or any officer thereof, shall fail to comply with the provisions of the preceding section, such corporation shall forfeit to the State the sum of one thousand dollars, to be recovered by civil action in the name of the State in any court of competent jurisdiction.

## LEGISLATIVE ACTS RELATING TO CORPORATIONS, ENACTED SUBSEQUENTLY TO 1890.

1. In relation to offenses against the elective franchise.
2. Relating to the dissolution of corporations.
3. In relation to foreign corporations.
4. To provide for the amendment of articles of incorporation.
5. To provide for service of summons upon corporations.
6. Same, in justices' courts.
7. To provide for the publication of certain legal notices.
8. To protect employees in their right to belong to labor organizations.
9. Creating State and local boards of arbitration.
10. Concerning fees to be paid by corporations.
11. To prevent blacklisting and boycotting.

### Act 1.

AN ACT in relation to elections and crimes and offenses against the elective franchise.

Be it enacted by the general assembly of the State of Colorado:

§ 4. \* \* \* It shall be unlawful for any employer, either corporation, association, company, firm or person, in paying its, their or his employees the salary or wages due them, to inclose their pay in "pay envelopes"

upon which there is written or printed any political mottoes, devices or arguments, containing threats, express or implied, intended or calculated to influence the political opinion, views or actions of such employees. Nor shall it be lawful for any employer, either corporation, association, company, firm or person, within ninety days of any election provided by law, to put up or otherwise exhibit in its, their or his factory, work shop, mine, mill, boarding-house, office or other establishment or place where its, their or his employees may be working or be present in the course of such employment any handbill, notice or placard containing any threat, notice or information that in case any particular ticket or candidate shall be elected, work in its, their or his place or establishment will cease in whole or in part or its, their or his establishment be closed, or the wages of its, their or his workmen be reduced; or other threats, express or implied, intended or calculated to influence the political opinions or actions of its, their or his employees. Any person or persons, or corporation violating any of the provisions of

Dissolution; foreign corporations — Acts of 1891.

this section, shall be deemed guilty of a misdemeanor and any person, whether acting in his individual capacity or as an officer or agent of any corporation so guilty of such misdemeanor shall be punished as hereinafter prescribed.

§ 5. It shall be unlawful for any corporation or any officer or agent of any corporation to influence or attempt to influence by force, violence or restraint or by inflicting or threatening to inflict any injury, damage, harm or loss, or by discharging from employment or promoting in employment, or by intimidation or otherwise in any manner whatever, to induce or compel any employee to vote or refrain from voting at any election provided by law, or to vote or refrain from voting for any particular person or persons at any such election. Any such corporation, or any officer or agent of such corporation, violating any of the provisions of this section, shall be deemed guilty of a misdemeanor, and be subject to the penalty hereinafter provided, and in addition thereto, any corporation violating this section shall forfeit its charter and right to do business in this State.

§ 10. The provisions of this act shall extend so far as applicable to all elections provided by law, either general, special or primary.

§ 11. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed; Provided, That the repeal of such acts or parts of acts, or any of them shall not be construed to affect any offense committed or any prosecution or proceeding instituted or pending under the laws so repealed.

(Approved March 7, 1891.)

**Act 2.**

AN ACT relating to the dissolution of corporations, formed under the laws of the State of Colorado.

Be it enacted by the general assembly of the State of Colorado:

Section 1. Whenever the stockholders of any corporation, formed under the laws of the State of Colorado, desire to dissolve the corporation, prior to the time limited by law, or by the terms of its articles of incorporation, they may do so upon vote of two-thirds (2-3) of the entire stock of the corporation, at a meeting of the stockholders of said corporation, which shall have been called for the purpose of considering the propriety of dissolving such corporation; but such dissolution shall not take place until all debts owing by the corporation shall have been fully paid. And notice of such meeting is to be given, in the manner provided by law for the calling of stockholders' meetings for the purpose of amending articles of incorporation. And when a dissolution shall have been so ordered, the president and sec-

retary of such corporation shall make and sign a notice of dissolution, under the seal of such corporation, one copy of which shall be filed in the office of the secretary of State, and one copy of which shall be filed in every county in which the articles of incorporation of such corporation were filed; and a copy of such notice shall be published in some newspaper printed in each of said counties, for the period of six (6) weeks; and, upon the filing and publication of such notice, as aforesaid, such corporation shall be deemed to have been dissolved forever.

§ 2. All property belonging to such corporation at the time of the dissolution shall, by the trustees or directors of such corporation, be converted into cash, and distributed pro rata among the stockholders of the said corporation; said distribution to take place within six (6) months from the time of converting said property into cash.

(Approved April 1, 1891.)

See § 497, and cross-references.

**Act 3.**

AN ACT in relation to foreign corporations.

Be it enacted by the general assembly of the State of Colorado:

Section 1. No foreign corporation doing business in this State, shall be permitted to effect a reconstruction, by liquidation or otherwise, nor shall any such reconstruction or liquidation take effect as against any citizen of this State, unless all the rights, shares and interests of any citizen of this State shall have been or shall be protected, and the stock interests of any citizen of this State in such corporation shall have been or shall be fully reorganized, and in its original condition without diminution in number, amount or face value.

§ 2. Whereas in the opinion of the general assembly and (an) emergency exists, therefore this act shall be in force and take effect from and after its passage.

(Approved April 3, 1891.)

See Const., art. XV, § 10, and cross-references.

**Act 4.**

AN ACT to provide for the amendment of articles of incorporation of corporations organized under the laws of Colorado and to repeal an act entitled "An act to provide for the amendment of articles of incorporation of incorporated companies" except railroad companies, approved March 25, 1885, and all acts in conflict with the provisions hereof.

Be it enacted by the general assembly of the State of Colorado:

Section 1. That any corporation organized under the laws of this State may amend its articles of incorporation in any respect. Provided, No corporation shall by amend-

## Amendment of articles; summons — Acts of 1891.

ments so change its articles as to work a change in the object, or purpose for which such corporation was originally organized, Provided; That any ditch company may amend its articles so as to allow it to take stock in telephone companies for the purpose of affording facilities to such ditch companies in carrying on their business only.

§ 2. Any proposed amendment, or amendments, may be voted upon by the stockholders at their regular annual meeting. Provided; That the published notice of such annual meeting required by law, and by the by-laws of the corporation shall have contained a notice that such proposed amendment, or amendments, giving the purport of the same would be presented, and acted upon, at such meeting, or any proposed amendment, or amendments, may be voted upon at a special meeting of the stockholders called by order of the board of directors or trustees of the corporation, Provided; That such special meeting shall be called, and notice thereof be given as required by the by-laws of the corporation and as, provided in section three hundred and forty-seven (247)\* of the general statutes of Colorado.

§ 3. Whenever the holder, or holders of one-third in amount of the stock subscribed, issued credited to the holders thereof, or outstanding, as shown by the stock-books of any corporation created under the laws of the State, shall in writing request the president, or other head officer thereof to call a meeting of the stockholders thereof for the purpose of considering a proposed amendment or amendments, to the articles of incorporation of such corporation, setting forth in such written request, the substance of each proposed amendment, or amendments; such president, or other head officer shall without unnecessary delay, call a meeting of the board of directors, or trustees of such corporation as the case may be, and present such request to such board, and thereupon it shall be the duty of such board of directors, or trustees to call a special meeting of the stockholders, of such corporation to be called for the purpose of considering said proposed amendment, or amendments, to its articles of incorporation, for a time not less, than thirty, nor more than sixty days, thereafter; which said meeting, shall be called in the manner provided in section three hundred and forty-seven (247)\* of the general statutes of Colorado, and shall be held at the place appointed by the said board, and designated in such notice.

§ 4. At any such stockholders' meeting called, and held as provided in section two (2), or in section three (3) of this act, stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each share of stock held by him, and standing in his name upon the books of the company, and the voting shall be by ballot.

§ 5. If at any such meeting the proposed amendment, or amendments, to the articles of incorporation of the corporation shall receive the vote of two-thirds of all the stock of said corporation then subscribed, and in good faith outstanding, such amendment or amendments, shall be deemed adopted and a certificate setting forth the fact, or facts, signed by the president, or other head officer of said corporation and verified by his affidavit, and attested by the secretary thereof, with the seal of the corporation thereunto affixed, shall be filed for record, with the secretary of State, and a like certificate shall be filed in the office of the recorder of each county wherein the original articles of incorporation were filed, and thereafter, said amendments or amendments, shall be in full force and effect to the same extent, as if the same had been included in the original articles of incorporation.

§ 6. "An act entitled 'An act to provide for the amendments of articles of incorporations of incorporated companies except of railroad companies' " approved March 25 1885, and all other acts, and parts of acts in conflict with any of the provisions of this act are hereby repealed.

(Approved April 6, 1891.)

Certificate, requirements of. § 473. See §§ 623 et seq. This act repeals §§ 477, 478 and 479 of the statutes.

[All stockholders being present and assenting, a valid amendment to constitution of corporation may be passed at a time other than that prescribed in the constitution (dictum). Byers v. Hussey, 4 Col. 522. When member is bound to take notice of amendment. Id. Unauthorized increase of capital stock does not invalidate the original stock. Byers v. Rollins, 13 Col. 22; s. c., 21 Pac. Rep. 894. An owner who has pledged his stock may represent it at all meetings of stockholders and vote accordingly. Miller v. Murray, 17 Col. 408; s. c., 30 Pac. Rep. 46.]

## Act 5.

AN ACT to amend section 38 of an act for "an act to provide a code of procedure in civil actions for courts of record in the State of Colorado, and to repeal all acts inconsistent therewith," approved April 7, 1887.

Be it enacted by the general assembly of the State of Colorado:

Section 1. That section 38 of an act entitled "An act to provide a code of procedure in civil actions for courts of record in the State of Colorado, and to repeal all acts inconsistent therewith," approved April 7, 1887, be amended so as to read as follows:

§ 38. A summons shall be served as follows:

7th. If the action be against a private corporation, by delivering a copy of the summons to the president or other chief officer of such corporation, or to the secretary, treasurer, cashier or other general agent thereof; but if no such officer of the corporation can be found in the county in which

Summons; publication of notice — Acts of 1891.

the action is brought, then service may be made by delivering a copy of the summons to any stockholder of such corporation, who may be found in such county.

8th. If the action be against a railroad company, whether organized under the laws of this State or of any other State or Territory, and whether the charter prescribes the manner or place of the service of process on such company, the summons may be served by delivering a copy thereof to the president, or vice-president, or secretary, or treasurer, or cashier of such company; Provided, That if no such officer be found in the county, in which the action is brought, service of summons may be made by delivering a copy thereof to any regular or acting ticket agent of such company, having his office in the county in which the action is brought.

9th. If the action be against a foreign corporation, or joint-stock company or association, organized under the laws of another State or Territory, and doing business within this State the summons shall be served by delivering a copy to any agent of such corporation, company or association found in the county in which the action is brought. If no such agent be found in such county, then by delivering a copy of the summons to any stockholder who may be found in such county.

§ 2. This act shall be liberally construed, and no service of summons shall be set aside or quashed for any technical error, defect or omission, either in the summons or in the service of the summons which error, defect or omission does not affect some substantial right of the defendant or defendants there-with served.

§ 3. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed; but nothing herein contained shall be held to repeal any provision of law, now in force which authorizes or permits a summons to be served in any other county of the State, than that in which the action is brought.

(Approved April 13, 1891.)

See § 506, and next act.

[Service upon vice-president is sufficient, even though return does not show that president could not be found in the county. *Mining Co. v. Frost*, 15 Col. 310; s. e., 25 Pac. Rep. 506.]

**Act 6.**

AN ACT to provide for the service of summons in justice's courts, police courts and courts not of record, upon private corporations.

Be it enacted by the general assembly of the State of Colorado:

Section 1. In all suits brought in any justice court, police court or court not of record in this State, service of summons may be made upon private or foreign corporations in the manner following, to wit:

when suit is brought in the county in which such corporation has its principal office, or in which its principal business is carried on, service may be made by delivering a copy of the summons to the president or other head of such corporation, or to the secretary, cashier, treasurer, or general manager thereof, or, in case of the absence of said officers from the county, then upon any stockholder residing in the county in which such suit is brought. In all other cases service of summons may be made upon such corporation by delivering a copy thereof to the principal, local or station agent of such corporation, resident and employed in the county in which suit is brought. Provided; That, in all suits brought against corporations in the courts hereinbefore designated, summons shall be made returnable in not less than twenty days, nor more than thirty days from date of issuance of summons, and shall, to make service valid and effectual, be served at least ten days prior to the return day designated in the summons. In case of failure of service, alias and pluries summons, if necessary, may be issued. Nothing herein contained shall be construed to authorize the commencement of suit before any justice of the peace in any precinct or township other than that in which suit may be commenced by plaintiff, as is now provided by law.

(Approved April 13, 1891.)

See preceding act.

**Act 7.**

AN ACT to provide for the publication of certain legal notices.

Be it enacted by the general assembly of the State of Colorado:

Section 1. The governor, secretary of State and treasurer, shall on or before the third Monday in April in each year, designate a daily newspaper, published in the city of Denver, in which shall hereafter be published during the year following such designation, \* \* \* all notices and advertisements required by law to be published in a newspaper in actions against foreign corporations. \* \* \*

(Approved April 18, 1891.)

See Const., art. XV, § 10, as to foreign corporations.

**Act 8.**

AN ACT to protect employes and guarantee their right to belong to labor organizations, unions, societies or political parties; and to provide a penalty for violation thereof.

Be it enacted by the general assembly of the State of Colorado:

Section 1. That it shall be unlawful for any individual, company or corporation or

any member of any firm, or agent, officer or employe of any company or corporation, to prevent employes from forming, joining or belonging to any lawful labor organization, union, society or political party, or to coerce or attempt to coerce employes by discharging or threatening to discharge them from their employ or the employ of any firm, company or corporation because of their connection with such lawful labor organization, union, society or political party.

§ 2. Any person or any member of any firm, or agent, officer or employe of any such company or corporation, violating the provisions of section one of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars, nor more than five hundred dollars, or imprisoned for a period not less than six months nor more than one year, or both, in the discretion of the court.

(Approved March 18, 1897.)

#### Act 9.

AN ACT creating a State and local boards of arbitration and providing for the adjustment of differences arising between employers and employes and defining the powers and duties thereof and making an appropriation therefor.

Be it enacted by the general assembly of the State of Colorado:

Section 1. There shall be established a State board of arbitration consisting of three members, which shall be charged, among other duties provided by this act, with the consideration and settlement by means of arbitration, conciliation and adjustment, when possible, of strikes, lockouts and labor or wage controversies arising between employers and employes.

§ 2. That immediately after the passage of this act the governor shall appoint a State board of arbitration consisting of three qualified resident citizens of the State of Colorado and above the age of thirty years. One of the members of said board shall be selected from the ranks of active members of bona fide labor organizations of the State of Colorado, and one shall be selected from active employers of labor or from organizations representing employers of labor. The third member of the board shall be appointed by the governor from a list which shall not consist of more than six names selected from entirely disinterested ranks submitted by the two members of the board above designated. If any vacancy should occur in said board, the governor shall, in the same manner, appoint an eligible citizen for the remainder of the term, as hereinbefore provided.

§ 3. The third member of said board shall be secretary thereof, whose duty it shall be, in addition to his duties as a member of the board, to keep a full and faithful record of

the proceedings of the board and perform such clerical work as may be necessary for a concise statement of all official business that may be transacted. He shall be the custodian of all documents and testimony of an official character relating to the business of the board; and shall also have, under direction of a majority of the board, power to issue subpoenas, to administer oaths to witnesses cited before the board, to call for and examine books, papers and documents necessary for examination in the adjustment of labor differences, with the same authority to enforce their production as is possessed by courts of record or the judges thereof in this State.

§ 4. Said members of the board of arbitration shall take and subscribe the constitutional oath of office, and be sworn to the due and faithful performance of the duties of their respective offices before entering upon the discharge of the same. The secretary of state shall set apart and furnish an office in the State capitol for the proper and convenient transaction of the business of said board.

§ 5. That whenever any grievance or dispute of any nature shall arise between employer and employes, it shall be lawful for the parties to submit the same directly to said board, in case such parties elect to do so, and shall jointly notify said board or its clerk in writing of such desire. Whenever such notification is given it shall be the duty of said board to proceed with as little delay as possible to the locality of such grievance or dispute, and inquire into the cause or causes of such grievance or dispute. The parties to the grievance or dispute shall thereupon submit to said board in writing, clearly and in detail, their grievances and complaints and the cause or causes therefor, and severally agree in writing to submit to the decision of said board as to the matters so submitted, promising and agreeing to continue on in business or at work, without a lockout or strike until the decision is rendered by the board, provided such decision shall be given within ten days after the completion of the investigation. The board shall thereupon proceed to fully investigate and inquire into the matters in controversy and to take testimony under oath in relation thereto; and shall have power under its chairman or clerk to administer oaths, to issue subpoenas for the attendance of witnesses, the production of books and papers in like manner and with the same powers as provided for in section 3 of this act.

§ 6. That, after the matter has been fully heard, the said board, or a majority of its members, shall, within ten days, render a decision thereon in writing, signed by them or a majority of them, stating such details as will clearly show the nature of the decision and the points disposed of by them. The clerk of said board shall file four copies



of such decision, one with the secretary of State, a copy served to each of the parties to the controversy, and one copy retained by the board.

§ 7. That whenever a strike or lockout shall occur or seriously threaten in any part of the State, and shall come to the knowledge of the members of the board, or any one thereof by a written notice from either of the parties to such threatened strike or lockout, or from the mayor or clerk of the city or town, or from the justice of the peace of the district where such strike or lockout is threatened, it shall be their duty, and they are hereby directed, to proceed as soon as practicable to the locality of such strike or lockout and put themselves in communication with the parties to the controversy and endeavor by mediation to effect an amicable settlement of such controversy, and, if, in their judgment, it is deemed best, to inquire into the cause or causes of the controversy, and to that end the board is hereby authorized to subpoena witnesses, compel their attendance and send for persons and papers in like manner, and with the same power as it is authorized by section 3 of this act.

§ 8. That the fees of witnesses before said board of arbitration shall be two dollars (\$2) for each day's attendance, and five (5) cents per mile over the nearest traveled route in going to and returning from the place where attendance is required by the board. All subpoenas shall be signed by the secretary of the board and may be served by any person of legal age authorized by the board to serve the same.

§ 9. The parties to any controversy or difference as described in section 5 of this act may submit the matters in dispute in writing to a local board of arbitration and conciliation; said board may either be mutually agreed upon or the employer may designate one of such arbitrators, the employes or their duly authorized agent another, and the two arbitrators so designated may choose a third who shall be chairman of such local board; such board shall in respect to the matters referred to it have and exercise all the powers which the State board might have and exercise, and its decision shall have such binding effect as may be agreed upon by the parties to the controversy in the written submission. The jurisdiction of such local board shall be exclusive in respect to the matter submitted to it, but it may ask and receive the advice and assistance of the State board. Such local board shall render its decision in writing within ten days after the close of any hearing held by it, and shall file a copy thereof with the secretary of the State board. Each of such local arbitrators shall be entitled to receive from the treasurer of the city, village or town in which the controversy or difference that is the subject of arbitration exists, if such payment is approved by the mayor of such city, the board of trustees of such village, or the town

board of such town, the sum of three dollars for each day of actual service not exceeding ten days for any one arbitration: Provided, That when such hearing is held at some point having no organized town or city government, in such case the costs of such hearing shall be paid jointly by the parties to the controversy: Provided, further, That in the event of any local board of arbitration or a majority thereof failing to agree within ten (10) days after any case being placed in their hands, the State board shall be called upon to take charge of said case, as provided by this act.

§ 10. That said State board shall report to the governor annually, on or before the fifteenth day of November in each year, the work of the board, which shall include a concise statement of all cases coming before the board for adjustment.

§ 11. That the secretary of State shall be authorized and instructed to have printed for circulation one thousand (1,000) copies of the report of the secretary of the board, provided the volume shall not exceed four hundred (400) pages.

§ 12. That two members of the board of arbitration shall each receive the sum of five hundred dollars (\$500) annually, and shall be allowed all money actually and necessarily expended for traveling and other necessary expenses while in the performance of the duties of their office. The member herein designated to be the secretary of the board shall receive a salary of twelve hundred dollars (\$1,200) per annum. The salaries of the members shall be paid in monthly instalments by the State treasurer upon warrants issued by the auditor of the State. The other expenses of the board shall be paid in like manner upon approved vouchers signed by the chairman of the board of arbitration and the secretary thereof.

§ 13. The terms of office of the members of the board shall be as follows: That of the members who are to be selected from the ranks of labor organizations and from the active employers of labor shall be for two years, and thereafter every two years the governor shall appoint one from each class for the period of two years. The third member of the board shall be appointed as herein provided every two years. The governor shall have power to remove any members of said board for cause and fill any vacancy occasioned thereby.

§ 14. For the purpose of carrying out the provisions of this act there is hereby appropriated out of the general revenue fund the sum of seven thousand dollars for the fiscal years 1897 and 1898, only one-half of which shall be used in each year, or so much thereof as may be necessary, and not otherwise appropriated.

§ 15. In the opinion of the general assembly an emergency exists; therefore, this act shall take effect and be in force from and after its passage.

(Approved March 31, 1897.)

**Act 10.****AN ACT concerning corporations.**

Be it enacted by the general assembly of the State of Colorado:

Section 1. Every corporation, joint-stock company or association incorporated by or under any general or special law of this State, or by or under any general or special law of any foreign State or kingdom, or of any State or territory of the United States beyond the limits of this State, having capital stock divided into shares, shall pay to the secretary of State for the use of the State, a fee of ten dollars, in case the capital stock which said corporation, joint-stock company or association, is authorized to have, does not exceed fifty thousand dollars; but, in case the capital stock thereof is in excess of fifty thousand dollars, the secretary of State shall collect the further sum of fifteen cents on each and every thousand dollars of such excess, and a like fee of fifteen cents on each thousand of the amount of each subsequent increase of stock. The said fee shall be due and payable upon the filing of certificate of incorporation, articles of association, or charter of said incorporation, joint-stock company or association, in the office of the secretary of State; and no such corporation, joint-stock company or association shall have or exercise any corporate powers or be permitted to do any business in this State until the said fee shall have been paid; and the secretary of State shall not file any certificate of incorporation, articles of association, charter or certificate of the increase of capital stock, or certify or give any certificate to any such corporation, joint-stock company or association, until said fee shall have been paid to him. But this act shall not apply to corporations not for pecuniary profit, or corporations organized for religious, educational or benevolent purposes.

§ 2. Any foreign corporation doing business in this State, that has, since the filing of its certificate in this State, increased its capital stock, without paying the fees prescribed by the law of this State at the time of such increase, or that shall hereafter increase its capital stock, shall be liable to pay the fees prescribed by this act, and it is hereby made the duty of the secretary of State to at once cause action to be brought against any foreign corporation for recovery of such fees, and a certified copy of the certificate of such increase, on file in any foreign State, shall be sufficient evidence to sustain a judgment for the amount of such fees, and an action in the nature of a writ of quo warranto shall lie against any foreign corporation to test its right to exercise corporate franchises in this State.

§ 3. The secretary of State shall not file or record in his office any certificate of paid-up stock, certificate of impression of corporate seal or other paper of any corporation or association, nor issue any certificate to any corporation or association, unless the articles of incorporation of said company are already on file in his office, nor unless all fees prescribed by this act shall have been paid.

§ 4. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 5. In the opinion of the general assembly an emergency exists; therefore, this act shall take effect and be in force from and after its passage.

(Approved April 13, 1897.)

**Act 11.****AN ACT to prevent blacklisting and boycotting.**

Be it enacted by the general assembly of the State of Colorado:

Section 1. That any railroad or telegraph company, or any officer, agent or employe of any railroad or telegraph company, or any other company, corporation or individual doing business within the State of Colorado, shall not issue, circulate, or publish, or cause to (be) issued, circulated or published, any blacklist, circular, or other statement, regarding any person or persons who may have been in the employ of any of the above-mentioned railroads, telegraph, or other companies, corporations, or individuals, which will deprive said person or persons of, or in any way prevent them from obtaining employment.

§ 2. Any dismissed employe shall on demand be furnished by the aforesaid employer of said dismissed employe specific reasons in writing for said dismissal: Provided, That no person or corporation shall be held liable either civilly or criminally for any such reasons so given upon such request.

§ 3. It shall be unlawful for any person or persons, or combination of persons, or society, or union, to establish or institute, or engage in a boycott against any individual, firm or corporation carrying on any kind of trade or business, by agreeing not to patronize, trade or do business with any such individual, firm or corporation, or to induce others not to so patronize, trade or do business with any such individual, firm or corporation.

§ 4. Any violation of this act shall be a misdemeanor and punishable by fine of not less than five hundred (500) dollars, nor more than one thousand (1,000) dollars, or imprisonment of not less than sixty (60) days, nor more than one year, or both fine and imprisonment at the discretion of the court.

(Approved April 21, 1897.)

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CONNECTICUT.

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# CONNECTICUT.

## CONSTITUTION OF CONNECTICUT — 1818

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Declaration of Rights.

§ 11. The property of no person shall be taken for public use, without just compensation therefor.

Power of corporation to take and hold property. § 1906.

#### ARTICLE X.

##### General Provisions.

§ 3. The rights and duties of all corporations shall remain as if this Constitution had not been adopted; with the exception of such regulations and restrictions as are contained in this Constitution. \* \* \*

#### AMENDMENT, ARTICLE XXV.

No county, city, town, borough, or other municipality, shall ever subscribe to the capital stock of any railroad corporation, or become a purchaser of the bonds, or make donation to, or loan its credit, directly or indirectly, in aid of any such corporation; but nothing herein contained shall affect the validity of any bonds or debts incurred under existing laws, nor be construed to prohibit the general assembly from authorizing any town or city to protect by additional appropriations of money or credit any railroad debt contracted prior to the adoption of this amendment.

(Adopted October, 1877.)

# THE GENERAL STATUTES OF CONNECTICUT — 1887.

## TITLE I. CONSTRUCTION OF STATUTES.

Sec. 1. The word "person" includes corporations.

Section 1. \* \* \* The words "person" and "another" may extend and be applied to \* \* \* companies, corporations, public or private, and associations. \* \* \*

Corporate name. §§ 1905, 1944.

[All statutes which speak of persons cannot be construed to include corporations, but such a construction ought to be given in this respect as will effectuate the intentions of the legislature, promote the object, and prevent the evil in view. *Knox v. Protection Ins. Co.*, 9 Conn. 435.]

## TITLE XIII. COURTS OF PROBATE.

### CHAPTER LII.

#### Insolvent Debtors.

Sec. 502. Assigning debtor to deliver to probate court list of creditors and schedule of debts.

506. Assignment of estate of a corporation, how made.

§ 502. \* \* \* Where a corporation shall make an assignment it shall be the duty of the secretary of such corporation, and if there be no secretary or if he be absent or incapable, the president, to make and deliver such list and schedule (of debts, creditors and property), and any such officer failing to comply with the provisions of this section shall forfeit all benefits and privileges allowed to debtors by this chapter, shall not be entitled to a discharge, and shall be guilty of contempt and punishable therefor in the discretion of the court of probate.

Receivers of insolvent corporations. §§ 1321, 1322. Winding up corporations. §§ 1942, 1943, 1965, 1966, 1967. Dividends by insolvent corporation. § 1958. See act of 1895 concerning receivers, at p. 32; act of 1895 concerning winding up of corporations, at p. 33.

[Preference to director by insolvent corporation good in the absence of fraud. *Smith v. Skeary*, 47 Conn. 54. Power and status of insolvent corporation. See *Catlin v. Bank*, 6 Id. 241; *Pondville Co. v. Clark*, 25 Id. 101. If a stockholder of an insolvent corporation, by whose charter he is personally liable for its debts, dies, the distributees of his estate are not compelled to receive such stock, though, if they do, they subject themselves to the same liability. *Deming v. Bull*, 10 Conn. 416.]

§ 506. When the members of any corpora-

tion shall be reduced to a less number than that required by statute, or by its charter, its remaining members may in its name make an assignment of all its estate, and it may be proceeded against by any of its creditors as if such members were not so reduced in number, and service of process therein made upon any remaining member of such corporation shall be sufficient. The assignment of any corporation may be made by the directors in legal meeting called for such purpose.

See § 502, note.

## CHAPTER LIV.

### Probate of Wills.

Sec. 555. Notice of devise or bequest to corporation or voluntary association.

§ 555. Within thirty days after the admission to probate of any will, containing a devise or bequest to any corporation or voluntary association, the judge or clerk of the court of probate before which it is proved shall deposit in the post-office, postage paid, a written notice thereof directed to the devisee or legatee at the place where it is located.

## TITLE XIV. JUSTICES OF THE PEACE.

### CHAPTER LVII.

#### Jurisdiction of Justices of the Peace.

Sec. 667. Actions by foreign corporation.

§ 667. All civil actions brought by any corporation incorporated by the laws of any other State, or foreign government, against one or more of the inhabitants of this State, shall be made returnable to a justice of the peace, in the town in which the defendant or one of the defendants reside, if such actions are cognizable by a justice of the peace; but any corporation or association created by, or existing under the laws of the United States and located in any town in this State, may sue before any justice of the peace, before whom a civil action may be brought by any inhabitant of such town.

Actions not within jurisdiction of justice of the peace. § 969. Corporation may sue or be sued. § 1906 (2), note.



Service of process; attachment of shares; venue — Stat., §§ 908, 909, 919, 935, 969.

## TITLE XVIII. CIVIL ACTIONS.

### CHAPTER LXX.

#### Service of Process in Civil Actions.

- Sec. 908. Service against corporation.  
 909. Against voluntary associations.  
 919. Attachment of rights or shares in corporations.  
 935. Dissolution of such attachment.

§ 908. In actions against \* \* \* corporations, the service of the process by the officer by leaving a true and attested copy of it, and of the accompanying declaration or complaint, with or at the usual place of abode of \* \* \* the secretary, or cashier, or in the case of a private corporation having no secretary or cashier, at the principal place in this State, where such corporation transacts its business or exercises its corporate powers, shall be sufficient. When a corporation doing business in this State has no secretary or cashier resident in this State, service of process upon a resident director, shall be good and effectual service.

See § 1906 (2), note. Service on foreign corporations. See Acts Nos. 14, 19 and 23, at pp. 32, 35 and 36.

[Service of process on a member of a corporation is not service on the corporation. *Rand v. The Proprietors, etc.*, 3 Day (Sup. Ct.), 447.

If process be required to be served on secretary, service on director and general agent is ineffectual. *McCall v. Mfg. Co.*, 6 Conn. 434. But service may be made on a secretary de facto. *Id.* Fraudulent resignation of secretary to avoid service of summons is void, and service upon him is effectual. *Evarts v. Mfg. Co.*, 20 Conn. 457.

Whether if all the stock should be transferred to one individual, to evade service of process against the corporation, and there were no secretary or clerk existing, a valid service might not be made on such single stockholder, quare. *Id.* Service of a writ against a foreign corporation, made on its officers while in this State, will not confer jurisdiction on our courts. *Middlebrooks v. Ins. Co.*, 14 Conn. 3.]

§ 909. In actions against such voluntary associations as are liable to be sued, service of process may be made upon the presiding officer, secretary, or treasurer. The property of any such association, whether held by such association or in the hands of trustees for its benefit, may be attached and held to respond to any judgment that may be recovered against it; but the individual property of its members shall not be liable to attachment or levy of execution in such actions.

See § 1906, note.

[Individual liability of members. *Davison v. Holden*, 55 Conn. 103.]

§ 919. Rights or shares in the stock of any corporation, together with the dividends and profits, due and growing due thereon, may be attached, and taken on execution. Such attachment shall be made by leaving a true

and attested copy of the process, and of the accompanying complaint or declaration, with the proper endorsement thereon, of the officer serving the same, as in other cases, with the defendant, or at his usual place of abode, if within this State, and with the secretary, clerk, or cashier of such corporation, or if such corporation has no secretary, clerk, or cashier, or if he is absent from this State, then at the principal place, in this State, where such corporation transacts its business or exercises its corporate powers; and such rights or shares, together with the dividends and profits, shall be holden to respond to the judgment which may be recovered in said action, for sixty days only after its rendition; and when an officer, with a writ of attachment, shall apply to such secretary, clerk, or cashier, for the purpose of attaching such rights or shares, the secretary, clerk, or cashier, shall furnish him with a certificate, under his hand, in his official capacity, specifying the number of rights or shares which the defendant holds in the stock of such corporation, with the incumbrances thereon, if any, and the amount of dividends thereon due.

See § 1171.

[Where bank shares are attached, when cashier is absent, if no copy of writ be left at bank, no lien will be acquired on shares. *Bank v. Ferris*, 17 Conn. 259. Shares of stock not being distinguishable, a description specifying number of shares and owner is sufficient. *Id.* An equitable interest in shares of stock may be attached and sold the same as a legal interest. *Bank v. Jarvis*, 33 Conn. 372.]

§ 935. The defendant, if the attachment dissolved be of real estate, may file with the town clerk of the town where it lies, a certificate of such dissolution signed by the authority making the same; if the attachment be of shares in any corporation, he may leave a like certificate with the officer of the corporation with whom a copy of the attachment was left in service; and if the attachment be of debts, or effects, in the hands of a garnishee, he may leave a like certificate with the garnishee; and no such corporation shall be held liable to the defendant for refusing to transfer the shares attached, or to pay the dividends due thereon, and no such garnishee shall be held liable to the defendant for refusing to pay the debt, or return the effects attached in his hands, until such certificate shall have been so left.

### CHAPTER LXXI.

#### Venue of Civil Actions.

- Sec. 969. Actions by a foreign corporation.

§ 969. All actions not within the jurisdiction of a justice of the peace, brought by any corporation incorporated by the laws of

Pleadings; evidence; trials; execution — Stat., §§ 996, 1090, 1093, 1113, 1169, 1171.

any other State or a foreign government, against one or more of the inhabitants of this State, shall be made returnable to the superior court or court of common pleas in the county, or the district court, in the district, wherein the town is situated, in which the defendant, or one of the defendants, resides; but any corporation incorporated under the laws of the United States and located in any town in this State, may sue before the same courts in which any inhabitant of such town may sue.

Actions within jurisdiction of justice. § 667.  
Power of corporations to sue and be sued. § 1906 (2), note.

### CHAPTER LXXIII.

#### Pleadings.

Sec. 996. Pleading charters.

§ 996. All acts of incorporation passed by the general assembly may be declared on or pleaded as public acts.

[Corporation created by a private act, in order to sustain a suit, must set forth such parts of the act as are necessary to show that it is a corporation and has the power to sue. *Mfg. Co. v. Hartshorne*, 3 Conn. 202.]

### CHAPTER LXXV.

#### Evidence.

Sec. 1090. Certified copy of certificate of organization shall be prima facie evidence.  
1093. Files and records of corporations may be proved by copy.

§ 1090. A copy, certified by the secretary of this State, under its seal, of the original certificate of organization of any joint-stock corporation, shall be prima facie evidence of the due formation, existence, and capacity of such corporation.

§ 1093. The files, records, votes, and proceedings of any \* \* \* corporation, \* \* \* having a clerk, may, when he is absent, or unable to perform the duties of his office, be proved in any court by copies examined and sworn to by credible witnesses.

Books must be kept where. § 1953.

[Record-book of corporation is presumptive evidence of facts recited therein. *Lane v. Brinard*, 30 Conn. 576. In actions against corporation entries in record-book are admissible for plaintiff without proof that the meetings were duly warned. *Howard Ins. Co. v. Hope Ins. Co.*, 22 Conn. 403. Entries of proceedings of directors, in record-book, are legal evidence against it, but not conclusive, and may be contradicted by parol. *Goodwin v. Ins. Co.*, 24 Conn. 601. And a subsequent vote rescinding the former one might be given in evidence to show that it was repudiated by the corporation. *Id.* Vote of corporation approving minutes of last meeting amounts to a ratification, whether meeting was held regularly or not. *Ins. Co. v. Ins. Co.*, 22 Conn. 403. Corporation cannot introduce proof of its own votes repudiating act of agent, to rebut implication of ratifica-

tion of such act derived from their previous votes introduced by the adverse party. *Id.* But may introduce its true record-book to prove that another book is spurious. *Goodwin v. Ins. Co.*, supra. Records may be introduced to prove admission by corporation of its liability. *Ins. Co. v. Ins. Co.*, supra. Testimony by secretary that no vote of a certain character is on the records of a corporation is admissible. *Smith v. Richards*, 29 Conn. 243. Record of resignation may be made by the resigning officer. *Evarts v. Mfg. Co.*, 20 Conn. 457.]

### CHAPTER LXXVI.

#### Trials of Civil Actions.

Sec. 1113. Precedence of cases.

§ 1113. \* \* \* Appeals from probate, and from the doings of commissioners appointed by courts of probate, and actions brought by receivers of insolvent corporations by order of the court by which such receivers were appointed, shall have precedence of all other civil actions in respect to the order of trial, except as provided in the preceding section.

### CHAPTER LXXIX.

#### Executions.

Sec. 1169. Demand upon judgment against voluntary associations.  
1171. Levy on stock of a corporation.

§ 1169. Demand on execution, upon a judgment rendered against a voluntary association, may be made on its presiding officer, secretary, or treasurer.

§ 1171. The levy of an execution on the rights or shares which any person owns in the stock of any corporation, together with the interest, dividends, and profits, due and growing due thereon, shall be by leaving a true and attested copy thereof with the secretary, clerk, or cashier, with an attested certificate, by the officer making such levy, that he levies upon such rights or shares to satisfy such execution; and thereupon such officer shall, as in other cases, post and sell the same, together with such interest, dividends, and profits, or such part thereof as shall be sufficient to satisfy such execution; and shall give to the purchaser a written conveyance of such rights or shares; and shall also leave with such secretary, clerk, or cashier, a true and attested copy of the execution and of his return thereon; and the purchaser shall thereupon be entitled to all dividends and stock, and to the same privileges as a member of such corporation as such debtor was entitled to. And when any proper officer shall, with a writ of execution, apply to such secretary, clerk, or cashier, for the purpose of so levying upon such rights or shares, the secretary, clerk, or cashier shall furnish him with a certificate, under his hand, in his official capacity, stating the number of rights or shares the defendant holds in the stock of such corporation, with the incumbrances thereon, if any,

Foreign attachm.; mand. and quo war.; receivers — Stat., §§ 1235, 1296, 1300-2, 1321, 1322.

and the amount of dividends thereon due; but when any bank incorporated by this State, or any banking association, located and transacting business in this State, has no cashier, or the cashier is absent therefrom, or any other corporation incorporated by the laws of this State has no secretary or clerk therein, then the rights or shares in the stock of any such corporation may be taken by execution by leaving the copy of the execution and the certificates, in this section prescribed, at the principal house or place in this State where such corporation transacts its business or exercises its corporate powers.

See § 919.

[A written instrument of conveyance from officer to purchaser is indispensable; the officer's return alone is not sufficient. *Morgan v. Bank*, 14 Conn. 99.]

## CHAPTER LXXXVI.

### Actions by Foreign Attachment.

Sec. 1235. When a corporation garnishee cited in to disclose need not appear.

§ 1235. Whenever any corporation, which shall have been made a garnishee in any civil action, and cited in, to disclose in the court before which the same is returnable, was not indebted to, and had no effects of, the defendant in its possession when the complaint was served upon it, it need not appear before said court to disclose, if it shall cause the affidavit of its treasurer or its paymaster stating such fact to be filed in said court, on the return day of the complaint. If such affidavit shall be so filed and the plaintiff shall bring a scire facias against such corporation upon a judgment rendered against the defendant in the complaint, and it shall be found on the trial that the corporation was not indebted to the defendant and that it did not have his effects in its possession at the time of the service of the complaint, judgment shall be for the corporation to recover its costs.

## CHAPTER LXXXIX.

### Mandamus and Quo Warranto.

Sec. 1296. Stockholder of corporation may apply for writ of mandamus.  
1300. Informations in nature of quo warranto.  
1301. Costs.  
1302. Bond for costs.

§ 1296. Any stockholder of a corporation may apply for a writ of mandamus against such corporation, to compel it to obey the statute laws of this State.

Corporation may be sued. § 1906 (2).

§ 1300. When any person or corporation shall usurp the exercise of any office, franchise, or jurisdiction, the superior court may

proceed, by information in the nature of a quo warranto, to punish such person or corporation for such usurpation, according to the course of the common law; and may also permit such an information to be filed in the name of the State's attorney in the county where the cause of the action arises, at the relation of any person desiring to prosecute the same, against any person usurping any corporate franchise or office, and may proceed therein, and render judgment, according to the course of the common law.

[See *State v. Turnpike Co.*, 10 Conn. 157; *State v. Bull*, 16 id. 179; *Bridge Co. v. State*, 18 id. 53; *State v. Curtis*, 35 id. 374; *State v. North*, 42 id. 81; *State v. Lewis*, 51 id. 113; *Hinckley v. Breen*, 55 id. 119; s. c., 9 Atl. Rep. 31.]

§ 1301. Whenever an information in the nature of a quo warranto is brought at the relation of a private individual in the name of the State or its attorney, the court shall award costs to the prevailing party, whether relator or respondent, against the other as in civil cases.

§ 1302. The relator who prays out such information shall, in all cases, give bond to the other party for costs as by law required in civil actions.

## CHAPTER XCII.

### Receivers.

Sec. 1321. Reports of receivers of insolvent corporations.

1322. Rights of receivers of corporations.

§ 1321. The receivers, or receiver, if there be but one, of every insolvent corporation in this State, not otherwise obliged by law to make reports to court, covering substantially the same ground as hereinafter mentioned, shall at least once in every six months make, sign, swear to, and file with the clerk of the court by which they were appointed, a full and complete statement of all their doings, as such receivers, for the six months next prior to the filing of said statement, which statement shall contain a full and itemized account of all moneys received by them during the aforesaid period, the date of its receipt, the amount, the person from whom received, and on what account received; also a full and itemized account of all moneys paid out by them during said period, the date of payment, the person to whom paid, and the purpose for which paid.

Insolvent corporations. §§ 502, 506. Winding up corporations. §§ 1942, 1943, 1965, 1966, 1967. Action by receiver takes precedence. § 1113. See acts No. 12, at p. 32; No. 16, at p. 33; No. 23, at p. 36.

§ 1322. Receivers of a corporation, appointed by judicial authority, shall have the right to the possession of all its books, papers, and property, and power in their

Frauds by officers; apprentices and employes — Stat., §§ 1567, 1579, 1580, 1748-1749.

own names, or in its name, to commence and prosecute suits for and on behalf of said corporation; to defend all suits brought against it or them; to demand and receive all evidences of debt and property belonging to it, and to do and execute in its name, or in their names, as such receivers, all other acts and things which shall be necessary or proper in the execution of their trust; and shall have all the powers for any of said purposes possessed by said corporation.

See § 1321, note.

[See *Bank v. Wheeler*, 28 Conn. 433; *Bank v. Peck*, 29 id. 384.

Creditors of an insolvent corporation in the hands of a receiver judicially appointed, whose claims have been proved and allowed by the court, are entitled to be heard in the receiver's suit upon any of the doings of the court, or of the receiver, by which they made claim to be aggrieved, with the right to appeal to this court from a final decree unfavorable to their interests. If receiver declines to collect unpaid stock subscriptions and acts in collusion with the delinquent stockholders, the creditor may ask his removal; but they cannot resort to an independent suit against such delinquent stockholders for the unpaid subscriptions, for the appointment of a receiver to administer the amounts thus collected. *Links v. Bank. Co.*, 66 Conn. 277; s. c., 33 Atl. Rep. 1003.

In the distribution of the assets of an insolvent corporation in the hands of a receiver, a creditor is entitled to a dividend computed on the actual amount of his debt only. The fact that he holds other unsecured obligations in corporations as "collateral security," does not entitle him to a dividend computed upon his actual debt plus the amount of these obligations; nor does a sale of such obligations by the creditor to himself enlarge his rights in this respect. In *re Waddell-Eniz Co.*, 67 Conn. 324; s. c., 35 Atl. Rep. 257. Such obligations might constitute a debt against the insolvent corporation for their face value, if transferred by valid assignment to an innocent purchaser; but a sale by the creditor to himself after notice of the insolvency of the corporation and the appointment of a receiver, does not give him the standing of an innocent third party. *Id.*]

## TITLE XIX. CRIMES AND CRIMINAL PROSECUTION.

### CHAPTER XCIX.

#### Crimes.

#### IX. OFFENSES AGAINST PUBLIC POLICY.

Sec. 1567. Officers of corporations not to take fee or commissions as gratuities.

§ 1567. Every person \* \* \* being a member of the board of management of any public or private institution, or corporation, who shall receive for his own use, directly or indirectly, from any person with whom he makes a contract, or transacts any business, \* \* \* or with whom the board of management of which he is a member, makes a contract or transacts any business, any payment, commission, or compensation, whether direct or under the form of some profitable sale, purchase, or contract, or gratuity of any kind, by reason of, or in acknowledgment for, or in connection with, the making of such contract, or the trans-

acting such business, shall be imprisoned not less than thirty-one days, nor more than one year, or fined not more than three hundred dollars, or both.

## XI. FRAUDS.

Sec. 1579. Embezzlement by officer of corporation. 1580. Same.

§ 1579. Every officer or agent of any public, municipal, or private corporation, \* \* \* who shall wrongfully appropriate and convert to his own use the money, funds, or property of such corporation, \* \* \* shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

See §§ 1567, 1580.

§ 1580. (As amended May 1, 1895.) Every officer or agent of any private corporation or voluntary association of this State, or of any common carrier, or any agent of any business house or private individual, who shall take, purloin, secrete, or in any way appropriate to his own use, or to the use of others, any of the goods, moneys, or choses in action, in the care or custody of, belonging to, or deposited with, such corporation, voluntary association, carrier, house, or individual, with intent to defraud another, or who shall with like intent make any false entries upon any of their books, or shall keep false books or entries of and concerning their business and affairs with like intent, shall be imprisoned not more than ten years.

See §§ 1567, 1579.

[Necessary allegations of indictment. *State v. Fuller*, 34 Conn. 280.]

## TITLE XXII. APPRENTICES AND EMPLOYES.

### CHAPTER CVI.

Sec. 1748. Withholding wages.

1749. Weekly payments.

1750. When corporation shall be exempt from provisions of preceding section.

1751. Penalty for violation of preceding section.

1752. Wages paid before due not to be scaled.

1753. Employment of children.

§ 1748. Any person or corporation who shall withhold any part of the wages of any person, because of any agreement expressed or implied requiring notice before leaving the employment, shall forfeit fifty dollars, half to him who shall sue therefor, and half to the State.

§ 1749. Every corporation employing labor shall pay to its employes such compensation or wages as may be agreed upon, once a week; and such payment shall include all wages earned and unpaid up to the eighth day preceding the day of payment, and no

Corporate name; general powers — Stat., §§ 1750-1753; 1905, 1906 (1).

deduction from said wages shall be made on account of such weekly payment.

§ 1750. Every corporation which shall pay weekly to such of its employees as shall call at the usual place of payment for the same eighty per cent. of their estimated wages, earned and unpaid before the eighth day preceding the day of payment, making no discount on account of such weekly payment, and shall pay in full once in each month, and shall give notice of the same in its printed rules and regulations, shall be exempt from the provisions of the preceding section.

§ 1751. Any corporation violating the provisions of the two preceding sections shall forfeit the sum of fifty dollars, half to him who shall sue therefor, and half to the State.

§ 1752. No employer of labor, nor any person acting for him, shall in any manner or form make a discount or deduction from the wages of any person employed by him, when the wages of the employe or any part thereof are paid at an earlier time than that at which such wages would regularly have been paid. And any person or corporation violating this section shall forfeit not less than ten nor more than one hundred dollars, half to him who shall sue therefor and half to the State.

§ 1753. (As amended May 7, 1895.) No child under fourteen years of age shall be employed in any mechanical, mercantile, or manufacturing establishment.

## TITLE XXX. PRIVATE CORPORATIONS.

### CHAPTER CXIX.

#### General Provisions.

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§ 1905. The name of every private corporation hereafter created shall indicate that it is a corporation.

Change of name. § 1949. How name shall begin and end. § 1944. "Person," includes corporations. § 1.

§ 1906. Every private corporation may, when no other provision is specially made,

(1) Receive, purchase, hold, sell, and convey real and personal estate, as the purposes of the corporation shall require, not exceeding the amount limited in its charter;

Eminent domain. Const., art. I, § 11. Regulation of investments. § 1917. Conveyances of real estate, how witnessed. § 2955. Taxation of corporate property. §§ 3832-3834. Corporation may hold property needed in its business. § 1952.

[By the common law, corporations have a right to purchase and hold property, so far as may be necessary to carry into execution the objects of their creation. *Factory v. Warner*, 1 Blatch. (U. S.) 277. But where corporation purchases property in order to make a malicious use of it, the motive becomes material as affecting the question as to their power to purchase. *Oecum Co. v. Mfg. Co.*, 34 Conn. 540. Corporation claiming under a devise in trust for others must show that it has corporate power so to hold in trust, such power not being incidental. *Green v. Dennis*, 6 Conn. 304. Statute requiring authority of agent for executing deeds to be evidenced by power of attorney, does not apply to deeds by agent of corporation. *Howe v. Kerler*, 27 Conn. 544. And, sensible, if agent of corporation should convey without authority, the deed might be made good by a vote of ratification. *Id.*

Conveyance signed by officer of corporation need not recite his authority, as that fact is always to be proved by extrinsic evidence. *Hart v. Stone*, 30 Conn. 96. Such authority is not necessarily to be proved by formal vote of corporation. *Id.* In executing deed of corporation, agent must affix the corporate seal. *Bank v. Davis*, 8 Conn. 207.

Whether joint-stock corporation of this State can buy out the property, etc., of similar corporation of another State, *quære*. *Terry v. Lock Co.*, 47 Conn. 160.

Mortgage of corporate property to pay for stock purchased of a stockholder in order to get rid of him, held good as against subsequent creditors. *Smith v. Gaylord*, 47 Conn. 382.

## General powers of corporations — Stat., § 1906 (2-5).

New York corporation may receive power from Connecticut legislature to mortgage its Connecticut with its New York property. *Mead v. R. R. Co.*, 45 Conn. 220. Power to borrow money on mortgage does not imply power to take stock in a building association. *Bank v. Agency Co.*, 24 Conn. 164.]

(2) May sue and be sued, complain and defend in any court;

Service of process. §§ 908, 909. Venue of actions. §§ 667, 969. Pleading charters. § 996. Evidence. §§ 1090, 1093. Precedence of cases. § 1113. Executions. §§ 1169, 1171. When corporation garnishee need not appear. § 1235. Mandamus and quo warranto. §§ 1296-1302. Receiver of corporation may sue and be sued. § 1322. Ex parte injunctions. Act of 1889, see p. 27. Discovery in action against a corporation. Act of 1889, see p. 27.

[Corporation not liable for services rendered before organization was effected, in procuring subscriptions to capital stock. *R. R. Co. v. Ketchum*, 27 Conn. 179. Corporation authorized to lend money upon pledges, and with ordinary power to sue and be sued, is not restricted to sale of pledge in case of non-payment, but may sue the borrower directly. *Loan Co. v. Towner*, 13 Conn. 257.

Equity will enjoin corporation, at the instance of any member, from wasting or misappropriating corporate property. *Scotfield v. School Dist.*, 27 Conn. 504. And will interpose to protect a dissenting minority of the stockholders. *Pratt v. Pratt*, 33 Conn. 455.

A corporation is a moral person, and may vindicate and preserve all its rights by the common and statute laws, as all other persons may, except so far as restrained by law or its charter. *Stratford v. Sanford*, 9 Conn. 282.

An action on the statute against vexatious suits lies against a bank for such a suit brought in its name and behalf by a vote of the directors, never repudiated by the corporation. *Goodspeed v. Bank*, 22 Conn. 536.

Bill in equity, brought by minority stockholders and directors to prevent a fraudulent combination, held good. *Sears v. Hotchkiss*, 25 Conn. 177.

A domestic corporation may be sued by a non-resident by writ of summons in any county in this State where a stockholder resides. *Wood v. Ins. Co.*, 13 Conn. 210.

Corporation created by United States is amenable to that sovereignty only, except so far as jurisdiction over suits against it may be conferred by congress on State tribunal. *State v. Curtis*, 35 Conn. 378; *Sill v. Bank*, 5 id. 105.

Corporate character of a plaintiff, and its capacity to sue, are admitted by a plea to the merits, and want of such character or capacity can be taken advantage of only by a plea in abatement. *Bank v. Ford*, 27 Conn. 288; *Bank v. Church*, 29 id. 148.

In an action by corporation for damage to its property, not necessary for plaintiff to prove its power to hold such property. *Trans. Co. v. Vanderbilt*, 15 Conn. 427.

Trespass will not lie against a corporation for the taking of land, if its charter gives another mode of obtaining satisfaction. *Hooker v. N. H. & N. Co.*, 15 Conn. 323. But corporation must appear to have taken the proper steps under the charter to give the plaintiff the satisfaction there provided for. Id.

A creditor of a corporation may file a bill in equity against a wrongdoer to prevent an injury to it without averring that the corporation has refused to take measures to protect itself. *Lothrop v. Stedman*, 42 Conn. 589.

Equity may, at the suit of a stockholder, restrain corporation from willful misapplication of funds, and compel directors to account for any

waste amounting to a breach of trust. *Hardon v. Newton*, 14 Blatchf. (U. S.) 379.

In a suit by a foreign corporation, defendant's plea of the general issue admits plaintiff's capacity to sue. *Bank v. Curtis*, 14 Conn. 440. But not, if the action be ex contractu, that it had power to make the contract, which must be proved in the same manner as all foreign laws must be, to entitle them to a recovery. Id.]

(3) Have a common seal, which it may alter at pleasure;

[In executing deed of corporation, agent must affix the corporate seal. *Bank v. Davis*, 8 Conn. 207.]

(4) Elect in such manner as it may determine all necessary officers, fix their compensation, and define their duties and obligations;

Appointment of officers. § 1950, and note. Duty of secretary. § 1915. Officers to hold over. § 1920. Voting. §§ 1925-1927. Negligent officers, penalty. § 1959. Crimes by corporate officers. §§ 1567, 1579, 1580. Discovery from officers. Act of 1889, see p. 27. Officers not to borrow money. Act of 1889, see p. 27. Annual statement by officers. § 1937.

(5) And may make by-laws consistent with law for its government, the regulation of its affairs, and the management of its property.

See § 1908. Transfers of stock regulated by by-laws. § 1960. And assessments upon subscriptions. § 1929. By-laws adopted at first meeting. § 1946.

[By-laws to govern consolidated corporation. *Lane v. Brainard*, 30 Conn. 576.

Construction of charters and corporate powers.—Where language of a public grant admits equally of two constructions, that most favorable to the State is to be adopted. *Bridge Co. v. Ferry Co.*, 29 Conn. 221; *Turnpike Co. v. Marshall*, 11 id. 190. See also *Bradley v. R. R. Co.*, 21 id. 306.

In public grants nothing passes by implication. *Hooker v. N. H. & N. Co.*, 15 Conn. 321. A grant of exclusive privileges in derogation of public rights is to be construed strictly. Id.

No construction should be given to charter of private corporation, unless the rules of law imperiously require it, which will defeat the object of the grant, impair the public interest, ruin the corporation, or defraud third persons. *R. R. Co. v. Kennedy*, 12 id. 527.

The charter of a corporation is a contract between it and each of its stockholders, and neither directors nor majority of stockholders can bind a minority without the assent of the latter, in any manner not expressly or impliedly authorized by the charter. *Byrne v. Mfg. Co.*, 65 Conn. 336; s. c., 31 Atl. Rep. 833.]

[General powers and liabilities of corporations.—A corporation has only such rights and powers as are expressly granted, or as are necessary to carry into effect the rights and powers so granted. *Ins. Co. v. Ely*, 5 Conn. 568; *New London v. Brainard*, 22 id. 553; *Oceum Co. v. Mfg. Co.*, 34 id. 541; *Catlin v. Bank*, 6 id. 230; *Berlin v. The School*, etc., 9 id. 180; *Ins. Co. v. Weed*, 28 id. 63. Specific grant of certain powers is an implied prohibition of other and distinct powers. *Ins. Co. v. Ely*, supra.

Corporation may exercise all powers within the

## Formation of corporations; by-laws; pre-existing charters — Stat., §§ 1907-1911.

fair intent and purpose of its creation which are reasonably proper to give effect to powers expressly granted; and it must have a choice of means adapted to ends, and not be confined to any one mode of operation. *Bridgeport v. R. R. Co.*, 15 Conn. 502. Corporation must not exercise discretionary powers in such a way as to infringe on the rights of others. *Holmes et al. v. Mfg. Co.*, 37 Conn. 293. Corporation may have power to enter into a copartnership. *Butler v. American Toy Co.*, 46 Conn. 145. Corporation can only contract by virtue of its charter, and if the subject-matter as to which it can contract, and the mode, are therein prescribed, they must be strictly pursued. *Ins. Co. v. Ely*, supra.

Banks, and similar corporations, authorized to contract in a particular mode, may, by a course of practice, render themselves liable on instruments executed in a different mode. *Bulkley v. Fishing Co.*, 2 Conn. 252; *Witte v. Fishing Co.*, id. 261; *Kilgore v. Bulkley*, 14 id. 384.

If charter prohibits discounting of notes, corporation cannot recover upon a note which it has discounted. *Loan Co. v. Towner*, 13 Conn. 260.

Corporation, as well as an individual, is bound to so use its rights as not to injure others. *Hooker v. N. H. & N. Co.*, 15 Conn. 321. But injuries may be done to private property by a private corporation in constructing public works, so inseparably connected with their construction as not to found an action against the corporation. *Id.*

Insurance, canal, bridge and turnpike companies are not public corporations, nor are their agents to be ranked with public agents. *Hooker v. N. H. & N. Co.*, 15 Conn. 321.

As to exclusive right to lay gas pipes in streets, see *Gas Light Co. v. Norwich Gas Co.*, 25 Conn. 32.

Powers of corporation incorporated to turn gunstocks. See *Turning Factory v. Warner*, 1 Blatchf. 277.

Incidental powers of mutual insurance company. *Ins. Co. v. Weed*, 28 Conn. 63. Of other insurance company. *Ins. Co. v. Ely*, 5 Conn. 568; *Same v. Bennett*, id. 578.

When equity will not, upon the petition of a general creditor, restrain corporation from converting assets into money. *Barr v. Mfg. Co.*, 41 Conn. 510.

Transfer of entire assets of an insolvent corporation to another corporation, or receiving in return certain shares of stock of latter company, held to be ultra vires. *Byrne v. Mfg. Co.*, 65 Conn. 336; s. c., 31 Atl. Rep. 833.

The right of a non-assenting stockholder to equitable relief does not depend in any respect upon the profitability or unprofitability of the transaction. He has the legal right to insist that the corporation shall keep within the powers granted by its charter. *Id.*

§ 1907. Any number of persons not less than three may associate for any lawful purpose, where no capital stock is created; and, being so associated, shall be a body politic and corporate, and may purchase, hold, and convey real and personal estate, the annual income from which shall not exceed five thousand dollars; but before any such association shall be entitled to the privileges herein granted, it shall lodge with the secretary of the State a copy of its articles of association, attested by its presiding officer and secretary, and cause them to be recorded in the records of the town where such association is situated; and no subsequent alteration or amendment of its articles of association shall take effect until it is so attested, lodged, and recorded; and the general assembly may at any time rescind the

powers of any such association and prescribe the mode of settlement of its affairs.

## Organization with capital stock. § 1944.

[Where charter of corporation provided that net income from property invested should not exceed \$10,000, held, that this did not necessarily prevent it from taking by devise property which would increase the income to exceed \$10,000, and that the burden of proving its capacity did not rest on the corporation. *White v. Howard*, 38 Conn. 362.]

§ 1908. Any association formed under the provisions of the preceding section may make by-laws imposing fines and penalties, and lay assessments to further the objects of such association, but such by-laws and assessments shall be adopted by two-thirds of the members of the association, and no assessment or fine shall exceed the sum of twenty-five dollars, and such association may sue for and collect such fines and assessments.

## By-laws. § 1906 (5).

§ 1909. All acts creating or authorizing the organization of corporations, or altering the charters of corporations previously existing, which have been or shall be passed by the general assembly, and the charters of all corporations heretofore granted, and under which no corporations have been organized, shall be subject to alteration, amendment, and repeal at the pleasure of the general assembly, unless otherwise expressly provided in such acts.

## See § 1911.

[Charter of a corporation may be affected by subsequent legislation in three ways. See *R. R. Co. v. Chapman*, 38 Conn. 71. Application to legislature by directors for amendment of charter. See *Mfg. Co. v. Smith*, 2 Conn. 583.

Legislature, on repealing a charter, may appoint a trustee for the benefit of creditors and stockholders; and, failing such an appointment, equity might appoint such a trustee. *Lothrop v. Stedman*, 42 Conn. 590.

When legislature has power to repeal, it can repeal conditionally, and divest the directors of the custody of the assets in favor of a public officer, pending an investigation into the solvency of the corporation. *Id.*

§ 1910. The charter of any private corporation hereafter granted shall be and become void, unless said corporation shall be organized, and a certificate of such organization sworn to by the president or secretary, or, if there be no such officers, by an officer having custody of the records of such corporation, shall be filed in the office of the secretary of the state within two years from the date of the approval of its charter.

§ 1911. When any amendment or alteration of the charter of any corporation shall be made, if it be not otherwise specially provided in the resolution making such alteration or amendment, it shall not become

Charter fees; subscription to stock; meetings — Stat., §§ 1912-1920.

operative, unless within six months after its passage it shall be accepted at a meeting of said corporation, legally warned for that purpose, nor unless an attested copy of said acceptance shall be lodged on file in the office of the secretary of state, to be recorded by him in a book kept for that purpose; and such acceptance shall operate to make the original charter, and all resolutions amending and altering the same, subject to amendment, alteration, and repeal, at the pleasure of the general assembly.

See § 1909.

[But legislature may amend charter and impose duties on a corporation without acceptance. State v. N. H. & N. Co., 43 Conn. 376.]

§ 1912. No application for a charter for any business corporation authorized to do and perform its principal business outside the limits of this State having a capital stock, all or any part of which is to be divided into shares and held by shareholders, shall be heard by the general assembly or any committee thereof until the parties applying for the same have paid to the treasurer of the State one hundred dollars.

§ 1913. No such business corporation having a capital stock, hereafter incorporated, shall commence to do business until it shall have paid to the treasurer of the state not less than one hundred dollars, and not more than five thousand dollars, as the same may be assessed and determined by the state board of equalization.

§ 1914. Every such business corporation which shall hereafter increase its capital stock shall, within thirty days after the new stock is subscribed for, or issued, pay to the treasurer of the State not less than one hundred dollars, and not more than five thousand dollars, as the same may be assessed and determined by the state board of equalization.

Above section is repealed by act of 1889. See p. 27.

§ 1915. No certified copy of any charter or organization certificate of any such corporation shall be issued by the secretary of the State until the payments required by sections 1912 and 1913 have been duly made.

§ 1916. All sums paid to the treasurer under the provisions of the four preceding sections shall be in lieu of all other tax upon the franchise of such corporation, but it shall not be in lieu of any taxes imposed by law upon the property of such corporation, or upon the shares of stock held by individual stockholders residing in this State. In assessing the valuation of a franchise under the provisions of sections 1913 and 1914, the State board of equalization shall consider as one of the elements determining the value of the franchise, the amount of the capital stock of such corpo-

ration, unless upon proper investigation such board shall find that a part of such capital stock has been issued in payment for patent rights owned by such corporation, or unless such corporation is organized for the purpose of doing a fire or life insurance business; Provided, That nothing contained in this and the four preceding sections shall apply to life insurance corporations doing business in whole or in part upon a mutual plan.

§ 1917. Whenever the board of directors of any corporation organized under the laws of this State for the purpose of lending money on real estate security, and issuing, negotiating, guarantying, and dealing in bonds and mortgage securities, shall have voted that said corporation shall never issue and have outstanding at any one time bonds exceeding a certain amount specified in such vote, and said vote shall be ratified and approved by said corporation at a meeting of the stockholders, a copy of such votes of the directors and of the corporation, certified by its secretary and attested by the president and a majority of the directors, may be filed for record in the office of the secretary of the State, and thereupon said votes shall be effectual to bind said corporation, and shall operate as a perpetual limitation of its corporate powers.

§ 1918. When any commissioners or corporators to receive subscriptions to the capital stock of a corporation shall be satisfied that any subscription is not made in good faith, they shall disallow it, and return to the person subscribing such installment as may have been paid by him.

§ 1919. Whenever any corporation, public or private, except corporations having a capital stock, or associated proprietors of common fields, or whenever any association organized under the laws of this State shall have failed to hold their annual meeting, or to legally elect officers thereat, and no provision shall be contained in its charter, articles of association, or by-laws, or provided by law for such contingency, a special meeting for that purpose may be called by the persons whose duty it is to call the annual meeting, and shall be called by such persons whenever requested so to do by not less than ten, or a majority of the members of such corporation, or association, in writing, and such notice shall be given of such special meeting as is required in calling an annual meeting, and at such meeting the necessary officers may be elected.

First meeting. § 1945.

§ 1920. When any corporation having a capital stock, or any associated proprietors of common fields, shall have failed to hold their annual meeting or to elect officers thereat, and no provision shall be contained in its charter, or articles of association or by-laws for such contingency, the officers of such corporation or association shall hold



## Capital stock; meetings of stockholders — Stat., §§ 1921-1929.

their offices until others shall be appointed in their stead; and in such case a special or annual meeting may be called by its president or vice-president, or a majority of its directors; and on their refusal, by one-fourth of the associated proprietors, or the holders of one-third of the capital stock if not less than one-fourth in number of the stockholders, by a writing designating the time and place, and giving such notice as is required in calling an annual meeting; and at such meeting the necessary officers may be elected; and in such case, such failure shall not impair the rights of said corporation or association.

[Failure to hold new election, officers hold over. *Spencer v. Champion*, 9 Conn. 542.]

§ 1921. Nothing in the preceding section shall at any time revive any corporation whose powers may have expired for any other cause than that hereinbefore named, nor any corporation which shall have in fact abandoned and ceased to exercise the powers and franchises granted by its charter.

§ 1922. Any one of the directors or executive officers of any corporation, incorporated by the laws of this State, owning stock in any of the banks or other corporations of the State, shall be eligible to be elected as a director of such banks or other corporations, at any meeting of stockholders of such banks or other corporations, legally convened for the election of directors, and upon such election may act as director of such bank or other corporation; Provided, That not more than one single person of such directors or executive officers shall be eligible to serve as such director at the same time.

## Appointment of directors. § 1950.

[Admissions of president and directors of a bank are inadmissible in defense to a suit by the bank. *Bank v. Hart*, 3 Day (Sup. Ct.), 495. Declaration of directors of a corporation inadmissible, when. *Bridge Co. v. Granger*, 4 Conn. 147. Bankruptcy of stockholder does not make him ineligible as a director. 42 Conn. 569.]

§ 1923. When not otherwise provided in its charter, the stock of every corporation shall be personal property, and be transferred only on its books, in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock owned by any person therein, for all debts due to it from him.

Transfer to avoid taxation, penalty. § 3839. Attachment of shares of stock. §§ 919, 935. Levy of execution against stock. § 1171. Stock, how pledged. § 1924. Transfer of stock, and lien of corporation. §§ 1960, 1961. Taxation of stock. §§ 3836-3838. Special taxes. §§ 3916 et seq. Preferred stock. Act of 1893, see p. 30.

[Assignment of stock on secret trust for benefit of the corporation was fraudulent. *Mann v. Cook*,

20 Conn. 186. This section, ipso facto, gave a corporation whose stock had been pledged a lien upon it for both the then existing and the future indebtedness of the stockholder, which was superior to the unperfected lien of the pledgee. *Bank v. Ins. Co.*, 45 Conn. 35.]

§ 1924. Shares of stock in any corporation organized in this State under the laws of this State, or of the United States, may be pledged by executing and delivering a power of attorney for its transfer, with the certificate of stock therein mentioned, to the party to whom the pledge is made; but no such pledge, unless consummated by an actual transfer of the stock to the name of such party, shall be effectual to hold such stock against any person but the pledgor, and his executors and administrators, until a copy of said power of attorney shall be filed with the cashier, treasurer, or secretary of said corporation.

See § 1923, and note.

[See *Bank v. Ins. Co.*, 45 Conn. 22; *Winslow v. Fletcher*, 53 Id. 390; s. c., 4 Atl. Rep. 259.]

§ 1925. At all meetings of corporations having a capital stock, stockholders may vote in person, or by an attorney duly authorized thereto.

Ex parte injunctions to restrain voting prohibited. Act of 1889, see p. 27.

[The books and records of a corporation determine who are its stockholders, and who have the right to vote on the stock. *State v. Ferris*, 42 Conn. 568. The bankruptcy of a stockholder does not preclude him from voting on his stock. Id. Vote fraudulently procured is vitiated. *Goodwin v. Ins. Co.*, 24 Conn. 602.]

§ 1926. At all meetings of stockholders each share shall entitle the holder thereof to one vote.

[Person in whose name stock stands upon the books has the right to vote it. *White v. Ferris*, 42 Conn. 560. And person having right to vote as a stockholder is eligible to any office to which a stockholder is eligible. Id.]

§ 1927. No person shall vote at any meeting of the stockholders of any bank or railroad company, by virtue of any power of attorney not executed within one year next preceding such meeting; and no such power shall be used at more than one annual meeting of such corporation.

§ 1928. A majority of the directors of every corporation, convened according to the by-laws, shall constitute a quorum for the transaction of business.

[Whatever is lawful for a corporation to do, may be done by a majority vote. *Eggleston v. Doolittle*, 33 Conn. 402. Bankruptcy of stockholder does not preclude his acting as a director. 42 Conn. 569.]

§ 1929. The directors of every corporation may call in the subscriptions to its capital!

stock by installments, in such proportion and at such times and places as they shall think proper, by giving such notice thereof as the by-laws shall prescribe; or, in the absence of such by-laws, on such notice as they deem reasonable; and if any stockholder shall fail to pay any such installment for sixty days after it shall have become payable, and after he shall have been notified thereof, said corporation may sell his stock at public auction, giving at least thirty days' notice thereof and of the time and place of sale, by advertisement in some newspaper published in the county where such corporation is located; and the proceeds thereof shall be first applied in payment of the installment called for and the expenses of the sale; and the residue shall be refunded to the owner.

**Lien of corporation for unpaid subscriptions.**  
§§ 1960, 1961.

[Action against subscriber for assessment, what is a defense. *Northrup v. Bushnell*, 38 Conn. 510; *R. R. Co. v. Brush*, 43 id. 95. After corporation is organized, the right to control future subscriptions passes from corporators to directors. *Id.* First payment on subscription being made on faith of incorrect information does not operate as a waiver or estoppel. *Id.* Irregular election of directors not a defense to action to enforce payment of installment on subscription, when majority of board who voted the assessment were regularly elected. *Turnpike Co. v. Thorpe*, 13 Conn. 183. Whether, in such an action, it is not enough to prove a vote by a de facto board, *quare*. *Id.*

Fraudulent withdrawal of stock: fictitious payments. See *Stebbins v. Cowles*, 10 Conn. 405.

When power of assessment could not be exercised by directors without authority of company. *Man. Co. v. Smith*, 2 Conn. 584.

Assessments are payable to the treasurer of the corporation. *R. R. Co. v. Wilson*, 22 Conn. 454.

Delinquent stockholder is liable for interest on assessments. *Mann v. Cooke*, 20 Conn. 190.

There are cases where the officers of a corporation may be compelled to make calls upon the stockholders for stock assessments, by a writ of mandamus. *Ward v. Mfg. Co.*, 16 Conn. 601.

Where stock is liable to assessment, the assessment falls upon the stockholder of record. *Davis v. Essex Society*, 44 Conn. 585.

Director not estopped from denying his subscription, when. *R. R. Co. v. Reynolds*, 46 Conn. 379.

As to a set-off, in an action for calls, on the insolvency of the corporation, of a collateral debt. See *Ins. Co. v. Weed*, 25 Conn. 68.

Subscription to capital stock creates a contract, and if a power to amend or repeal the charter be reserved to the legislature, though absolute in terms, it cannot be so exercised as to impair the obligation of such contract or to destroy vested rights. *R. R. Co. v. Chapman*, 38 Conn. 70.

From subscription to stock, the law implies a promise to pay installments as ordered by directors. *R. R. Co. v. Wilson*, 22 Conn. 452. And it is no defense to action for installments that corporation was not organized until after the subscription was made. *Id.* The title which subscriber acquires to the shares subscribed for is a good consideration for a promise by him to pay assessments. *Id.*

Irregularities in proceedings by corporation no defense to action for assessments. *Id.*; see also *R. R. Co. v. Kennedy*, 12 Conn. 597.

Construction of charter as to the implied right to sue stockholders for subscriptions. *Id.*; *Mann v. Cooke*, 20 Conn. 187.

If there is no provision fixing the notice to be given to stockholders on the calling in of install-

ments upon subscription, reasonable notice is sufficient. *Turnpike Co. v. Thorp*, 13 Conn. 184.

A bill in equity was maintainable by a judgment creditor to compel the payment to the directors or to a receiver of unpaid installments on stock. *Ward v. Mfg. Co.*, 16 Conn. 597. Writ of mandamus to compel directors to call in unpaid installments would be a less adequate remedy. *Id.* 601.

Purchaser of stock not paid up, liable for installments. *R. R. Co. v. Boorman*, 12 Conn. 531.

In a suit to recover the unpaid assessment on capital stock of a joint-stock company, defendant, who was promoter of the concern and assisted in its organization, is estopped to defend upon ground that the required twenty per cent. of its capital stock has not, in fact, been paid in in cash. *Canfield v. Gregory*, 66 Conn. 9; s. c., 33 Atl. Rep. 536.]

**[Rights and liabilities of members.]**—Personal liability of stockholders of insolvent corporation was that of joint debtors, and could be enforced by a creditor in an action at law brought against all. *Denning v. Bull*, 10 Conn. 414. In such a case equity will compel the stockholders, as between themselves, to a pro rata contribution. *Id.*

Where charter provided that the persons and property of its members should be liable for all debts due by the corporation, held, that as soon as any debt was contracted, it was enforceable against the members as original debtors, as if there had been no incorporation. *Southmayd v. Russ*, 3 Conn. 55.

Where statute imposes on stockholders an absolute individual liability proportioned to the amount of their stock, such liability is an independent and original one, and the stockholders may be severally sued. *Paine v. Stewart*, 33 Conn. 529.

Charter provided that the persons and property of members should at all times be liable for all debts due from corporation. Held, that this liability attached only to those who were members when a legal demand was made for the payment of such a debt. *Bank v. Magill*, 5 Conn. 63. But if a transfer of stock be made to an irresponsible party, with intent to avoid this liability, it would be fraudulent, and void as against the company's creditors. *Id.*]

§ 1930. When any corporation shall impose a tax on the shares of its stock, it may appoint a collector thereof, who shall receive from its treasurer a tax bill and warrant, to be signed by any justice of the peace, directing such collector to collect the sums specified in such tax bill; and on neglect of any stockholder to pay the same within the time limited by such corporation, the collector may levy said warrant on such shares, or such part thereof as may be necessary to satisfy said tax and costs, and shall proceed therein in the manner provided by law for the collection of executions when levied on the shares of the capital stock of such corporation; and the fees of said collector shall be the same as are allowed to officers on executions.

§ 1931. No dividend exceeding the rate of ten per cent. a year, shall be declared by any corporation, until it shall have a surplus fund of twenty per cent.

Officers liable for illegal dividends. § 1932. Dividend by insolvent corporation, penalty. § 1938. Uncalled for dividends, disposition of. § 1964. Division of profits among employees. §§ 1925, 1936. Dividends on preferred stock. Act of 1893, see p. 30. See act concerning trust estates, at p. 27.

Dividends; reduction of stock; annual reports — Stat., §§ 1932-1942.

§ 1932. No corporation shall declare any dividend while its capital is impaired; and all officers who shall vote in favor of declaring such dividend, in case such dividend is declared, knowing or having the means of knowing that such capital is impaired, shall be jointly and severally liable, in an action on this statute, for all losses resulting from said declaration of dividend, and be guilty of a misdemeanor.

See § 1931, note.

§ 1933. When the capital stock of any specially chartered corporation, whose stock has been fully paid in shall have become impaired, it may reduce it, and the par value of its shares, to such amount as shall be justified by its assets; but no part of its assets shall be distributed to its stockholders before such reduction, and no reduction shall be made except upon the vote of the stockholders, approved by at least two-thirds of the board of directors, and certified under the corporate seal by the secretary, a copy of which shall be filed in the office of the secretary of the State.

Capital, how reduced or increased. §§ 1954, 1955.

§ 1934. The directors, after such reduction of capital, may require each shareholder to return his old certificate, and in lieu thereof may issue a new certificate certifying the number of shares to which he is entitled under the reduction, and such company after such reduction may increase its capital stock to any amount not exceeding the amount authorized in its charter.

See § 1933.

§ 1935. Any corporation organized after May 31, 1886, under general or special law, may, by its board of directors, distribute to the persons employed in its service, or to any of them, such portion of the profits of the business of the corporation as the board of directors may deem just and proper.

See § 1931 and cross-references.

§ 1936. Any corporation organized on or prior to May 31, 1886, may give to its board of directors the power to distribute to the persons employed in its service, or to any of them, such portion of the profits of the business of the corporation as said board may deem just and proper; provided, such power is given by a major vote of all the shareholders, at a meeting warned for the purpose.

§ 1937. The president and secretary of every corporation, having a capital stock and not required by law to make other annual returns of a similar character to some State officer, shall annually, on or before the fifteenth day of February or of August

lodge with the town clerk of the town in which said corporation is located a certificate, signed and sworn to by them, showing the condition of its affairs as nearly as the same can be ascertained, on the first day of December or January or on the first day of June or July next preceding the time of making such certificate, in the following particulars, to-wit: the amount of capital stock actually paid in, showing the amount paid in in cash and in other property, separately; the cash value of its real estate; the name, residence, and number of shares of each stockholder; the amount of its debts; the cash value of its personal estate; and the cash value of its credits; which certificate the town clerk shall record at length in a book to be kept by him for that purpose.

Corporate officers and their duties. § 1906 and cross-references. See following sections.

[Above statute is penal, and the liability imposed by following sections is in nature of penalty and not of a debt. *Mitchell v. Hotchkiss*, 48 Conn. 9.]

§ 1938. Any president or secretary of such a corporation, who shall intentionally neglect, or refuse to comply with the provisions of the preceding section, shall be liable for all the debts of said corporation contracted during the period of such neglect. But no action for any liability so incurred shall be brought except within three years after the debt contracted shall become due and payable.

See § 1931.

§ 1939. The secretary and every person having charge of the stock books of every corporation shall give upon the application of any person claiming to be, or to be the attorney of, a creditor of any stockholder, information as to the names of the stockholders and number of shares owned by them respectively; and any secretary refusing to give such information shall forfeit one hundred dollars to him who shall prosecute therefor.

See § 1937.

§ 1940. Corporations required to make reports to the general assembly, shall make them during the first week of each regular session.

§ 1941. No bank, savings bank, insurance company, or trust company, heretofore incorporated, shall change its location from one town to another, except by act of the general assembly.

See § 1937.

§ 1942. The superior court in the county in which any corporation, organized under the laws of this State, has its principal place of business, may, as a court of equity, on the

application of any of its stockholders, wind up its affairs and dissolve it, if said court shall find that said corporation has voted to wind up its affairs, or abandoned the business for which it was organized, and has thereafter neglected within a reasonable time or in a proper manner to wind up its affairs and distribute its effects among its stockholders; and for this purpose may, if it deem it necessary, appoint one or more receivers of the estate of said corporation, and limit a time for its creditors to present their claims to such receivers, and direct public notice thereof to be given; and all claims not presented within such time shall be barred. Said receivers shall allow all just claims against said corporation, collect its debts, sell its property, and convert the same into money, and report their doings to said court as it may direct. Said court may, on complaint of any person aggrieved by such doings, grant such relief as the nature of the case may require; and it may make such orders as to the doings of the receivers, their compensation, and other expenses, and as to the payment of debts and distribution of the effects of said corporation, as may be just and conformable to law.

Insolvent corporations. §§ 502, 506. Receivers of. §§ 1321, 1322. Winding up corporations. §§ 1965-1967. See § 1943.

[Corporation may be dissolved by a surrender of record, but the surrender must be accepted by the State. *Bridge Co. v. River Co.*, 7 Conn. 45.

The neglect of a corporation to perform some duty required by their charter, although sufficient to produce a forfeiture of corporate rights, cannot be taken advantage of collaterally before such forfeiture is judicially determined. *Pearce v. Olney*, 20 Conn. 557; *Kellogg v. Union Co.*, 12 id. 20; *Bridge Co. v. River Co.*, 7 id. 46.

Joint-stock association does not become extinct by the resignation of all its officers, and an omission to elect others, and a transfer of all the capital stock to a single individual. *Evarts v. Mannf. Co.*, 20 Conn. 458.

Where a power is reserved in the charter or by statute to repeal charter at pleasure, legislature can repeal it summarily and at discretion, and courts cannot review such action, unless the principles of natural justice have been clearly violated. *Lothrop v. Stedman*, 42 Conn. 590. Such a repeal does not impair the obligation of any pre-existing contract of the corporation. *Id.*

Above section applied. *Links v. Banking Co.*, 66 Conn. 277; s. c., 33 Atl. Rep. 1903; *In re Waddell-Entz Co.*, 67 Conn. 324; s. c., 35 Atl. Rep. 257.

Dissolution of corporation by forfeiture can be effected only after an opportunity for a hearing on proper proceedings. *Bank v. Bank*, 36 Conn. 334; s. c., 14 Wall. 383.

No dissolution otherwise than by repeal of charter or a judicial decree can affect the rights of its creditors. *Id.*

A court of equity cannot wind up or dissolve a corporation, unless specially authorized by statute. *Hardon v. Newton*, 14 Blatchf. (U. S.) 378.

Suit in equity to wind up a corporation will not be barred because a previous suit of the same character, and setting up similar grounds, has been heard on the merits and dismissed. *Neville v. Carriage Co.*, 47 Conn. 172.

A corporation abandoned its business because it had been thrown into bankruptcy. Held, that such abandonment, followed by long neglect to wind up its affairs, brought the case within this section. *Hart v. R. R. Co.*, 40 Conn. 540.]

§ 1943. When the stockholders of any corporation constituted under the laws of this State, shall have voted to discontinue its business and distribute its capital stock among its stockholders; it may apply to the superior court in the county where it is located, or to any judge of said court in vacation, for an order limiting a time for the creditors of said corporation to present their claims against it to its directors, and said court or judge may make such order, limiting not less than two months from its date, and shall prescribe the notice that shall be given thereof to said creditors; and all claims not presented in pursuance of said order shall be barred of a recovery. And any claim presented, which shall be rejected by the directors, shall be barred unless the owner thereof shall commence an action to enforce the same within four months after he shall receive written notice of its rejection.

See § 1942 and cross-references.

## CHAPTER CXX.

### Joint-Stock Corporations.

- Sec. 1944. Organization, name, etc.  
 1945. First and subsequent meetings, how called.  
 1946. Organization of first meeting, by-laws, etc.  
 1947. Stock must all be subscribed for and twenty per cent. paid in before business can be commenced.  
 1948. Articles of association to be published and filed with secretary of the State.  
 1949. Change of name, how secured.  
 1950. Appointment of directors, management, secretary, treasurer, etc.  
 1951. Change of business, when allowed.  
 1952. May hold property needed for its business.  
 1953. Books must be kept in town where corporation is located.  
 1954. Capital, how reduced or increased, and liability of stockholders.  
 1955. Twenty per cent. of amount added must be paid in.  
 1956. Annual report, character of and time of making.  
 1957. Removal to another town.  
 1958. Declaration of dividend by insolvent corporation.  
 1959. Negligent officers.  
 1960. Transfer of stock and lien of corporation on same.  
 1961. Stock may be sold by corporation having lien on same.  
 1962. New certificates to be issued to purchaser.  
 1963. Equity in stock pledged may be held by corporation.  
 1964. Disposition of uncalled for dividends.  
 1965. Winding up affairs of corporation, and limitation of claims against.  
 1966. Superior court may order sale of property of such corporations.  
 1967. Petition for dissolution upon failure to file statement of condition.  
 1968. Fee for recording certificates.

§ 1944. Any three or more persons who shall associate by written articles which shall express their agreement to constitute a corporation, the name by which it shall be known, the purpose for which it is con-

## Joint-stock corporations; consolidated corporations — Stat., §§ 1945-1946.

stituted, the town in this State in which it is to be located, the amount of its capital stock, and the number of shares each person is to take, which shares shall each be of the par value of one hundred dollars, fifty dollars, or twenty-five dollars, as may be prescribed in said articles, under any name commencing with "The" and ending with "company" or "corporation," which name is not then in use by any existing corporation in this State, for the purpose of carrying on any lawful business in this State, and out of this State, whatever lawful business may be incidental to the business within it, such business not to be either trust, insurance, buying and selling real estate, banking, or trading in bonds, notes, or other evidences of indebtedness, or trafficking in letters patent or patent rights, shall, when so associated, and when a certificate shall have been filed with the secretary of state as hereinafter provided, become and remain a joint-stock corporation under this chapter; and corporations may in like manner be formed under this chapter for the purpose of carrying on, out of this State, any lawful business not herein forbidden; provided, that in such case the secretary and treasurer and a majority of the directors shall always be residents of this State.

Certified copy of certificate evidence. § 1090. Usurpation of franchises. §§ 1300-1302. Corporate name. § 1905. Change of. § 1949. Changing purpose of corporation. § 1951. Capital, how reduced or increased. § 1954. Removal of place of business. §§ 1941, 1957. Articles to be published. § 1948. See act of 1893, validating certain irregularities and omissions, at p. 31.

[Existence of charter may be presumed from long-continued acts. *Green v. Dennis*, 6 Conn. 302.

No legal difficulty in the way of creating single corporation by concurrent action of two or more States; nor of creating new corporation out of two or more already existing, though one of them is a foreign one. *Bishop v. Brainerd*, 28 Conn. 290. As to by-laws of the new corporation, see *Lane v. Brainerd*, 30 Conn. 576.

Corporation organized to take a man's property and pay his debts. *Waterman's Appeal*, 26 Conn. 108.

Prior to act of 1876, nothing fraudulent in adoption for joint-stock corporation of names of some of its stockholders, arranged as in a partnership. *Holmes et al. v. Holmes, etc., Co.*, 37 Conn. 296. Such name does not import that corporation will enjoy the services of such stockholders. *Id.* But being adopted by consent of such stockholders, they are estopped from forbidding its use by the corporation, and from giving the same or similar names to a rival corporation. *Id.*

Above section construed. *Cainfield v. Gregory*, 66 Conn. 23; s. c., 33 Atl. Rep. 536.

In a suit between a private corporation and an individual, charter is to be construed by same rules as any other instrument, the question being as to intent of legislature, to be collected from the whole instrument. *Kellogg v. Union Co.*, 12 Conn. 18.

Irregularity in organization; stockholders liable as partners. *Bank v. Palmer*, 47 Conn. 447.

Proof that company existed de facto is sufficient on information for burning building with intent to defraud insurance company. *State v. Byrne*, 45 Conn. 280.

One having assisted in organizing and carrying on affairs of a corporation is estopped from denying the corporate existence. *Bldg. Assn. v. Ford*, 27 Conn. 289; *Same v. Rice*, *Id.* 293. And a stranger, who has purchased an equity of redemption of a mortgage from such person, is equally estopped. *Bank v. Collins*, 27 Conn. 145.

Where a special charter is followed by general legislation on same subject, which does not in terms, or by necessary construction repeal the particular grant, the two are deemed to stand together; one as the general law of the land, the other as the law of the particular case. *R. R. Co. v. Traction Co.*, 65 Conn. 411; s. c., 32 Atl. Rep. 953.

[Consolidated corporations.—Consolidation does not necessarily extinguish original corporations for all purposes. *Bishop v. Brainerd*, 28 Conn. 298. Merger of corporations. See *Platt v. R. R. Co.*, 26 Conn. 567; *Society, etc. v. New London*, 23 *Id.* 195.

Consolidated corporation may borrow, on mortgage, to pay off mortgage bonds, previously issued by either original corporation. *Mead v. R. R. Co.*, 45 Conn. 222.

Act of legislature expressly recognizing existence of new consolidated corporation operated as a full ratification of the consolidation. *Id.*]

§ 1945. Any two of the persons associated may call the first meeting of the corporation at such time and place as they may appoint by notice in any newspaper published in the county in which such corporation is to be established, at least fifteen days before the time appointed; but said notice may be waived by a writing signed by all the subscribers to the capital stock, specifying the time and place for said meeting, and recorded at length upon the records of the corporation. A written or printed notice of each subsequent meeting of such corporation, specifying the place, day, and hour of such meeting, shall be given by the president or secretary to each stockholder, by leaving it with him, or at his residence or usual place of business, or by depositing it in some post-office for transmission by mail, postage paid, addressed to him at his last known place of residence, at least five days before said meeting.

Corporation must organize within two years. § 1910. Special meeting, now called. § 1919.

[Proceedings of meeting are void unless all members are notified of such meeting. *Stowe v. Wise*, 7 Conn. 219.

Above section makes it the imperative duty of president or secretary to give the prescribed notice whenever it is properly required. *Bassett v. Atwater*, 65 Conn. 353; s. c., 32 Atl. Rep. 937. Each corporation may determine for itself under what circumstances a special meeting shall be held, and if a by-law which gives to the holders of a certain proportion of the stock the right to demand such meeting, is duly complied with, it thereupon becomes the legal duty of the president or secretary to issue the notice or call for the meeting, and this duty, in case of neglect or refusal, is enforceable by mandamus. *Id.*]

§ 1946. At the first meeting, including adjournments thereof, an organization shall be effected by the choice by ballot of a temporary clerk, and by the election by ballot of three or more directors, who are subscribers for the stock; and by-laws for the regulation of the affairs of the corporation

Articles to be published; change of name; directors — Stat., §§ 1947-1950.

may be adopted. At any subsequent meeting of the stockholders specially called for that purpose, by-laws may be adopted, or the by-laws previously adopted may be altered or repealed.

By-laws. § 1906(5).

[One having acted as director of corporation is deemed to have waived all objections to the regularity of his subscription. *Lane v. Brainard*, 30 Conn. 577. And all conditions to a subscription. *Id.*

Above section construed. *Canfield v. Gregory*, 66 Conn. 23; s. c., 33 Atl. Rep. 536.]

§ 1947. No association of persons, under this chapter, hereafter organized, shall commence business until all its capital stock shall be subscribed for by bona fide subscribers, and at least twenty per cent. thereof paid for in cash, nor until the requirements of the succeeding section shall have been complied with; and in case any portion of the balance of said stock shall be paid for in property, real or personal, such property shall be estimated for such purpose at the actual value thereof.

[Certificate of commissioners conclusive upon subscribers as to validity of subscriptions. *Bank v. Church*, 29 Conn. 148. Commissioners appointed by general assembly to receive subscriptions to stock of bridge company, and to proceed to organize "whenever the stock necessary for the construction of the bridge" was subscribed. Held, that their determination as to what amount was "necessary" was conclusive upon the courts. *Bridge Co. v. Westport*, 39 Conn. 348. Commissioners appointed to receive subscriptions to capital of proposed corporation may leave subscription books in charge of an agent. *Bridge Co. v. Westport*, 39 Conn. 349.

Commissioners functi officio. *State v. Bull*, 16 Conn. 190.

Effect of subscription paper cannot be controlled by evidence of parol agreement. *Turnpike Co. v. Thorp*, 13 Conn. 182.

Defendant having, without objection, acted as stockholder at meetings of corporation, held, that formal assignment to him of his shares was unnecessary. *R. R. Co. v. Wilson*, 22 Conn. 453.

Whether capital stock of joint-stock corporation may not be paid in, not in cash, but in property necessary for their business, quære. *Brown v. Illinois*, 27 Conn. 91.

Power of attorney to subscribe for stock, authorizes what. *Bank v. Church*, 29 Conn. 151.

Defendant induced to subscribe to stock of fraudulently-organized bank by false representations that he would not have to pay for it. Held, to be no defense, and that, by his participation in getting up the bank, he is estopped to deny its existence. *Bank v. Church*, 29 Conn. 150. But see *Bank v. Peck*, *id.* 285.

Stock may be paid for in notes of a third party. *Stoddard v. Foundry Co.*, 34 Conn. 545.

Stipulation in charter that company might be organized when one-fifth of capital should be subscribed. Held, that such stipulation authorized commencement of work without attempting to raise balance of capital. *R. R. Co. v. Chapman*, 38 Conn. 65.

Subscription, part of which to be paid in labor and material, sustained. *R. R. Co. v. Brush*, 43 Conn. 95.

Above section applied. *Canfield v. Gregory*, 66 Conn. 23; s. c., 33 Atl. Rep. 536.]

§ 1948. The directors shall cause the articles of association to be published at full length in a newspaper published in the

county where the corporation is located; and a majority of the directors shall make, sign, and swear to a certificate setting forth a true copy of the articles of association, which certificate shall state that such publication has been made, and also the name of the newspaper containing such publication, with the date thereof, and shall also state the names and residences of the subscribers thereto, the amount of the stock taken by each, the amount actually paid for in cash, and the amount paid for in property, specifying the same and giving the actual value thereof, and in case any portion of said property consists of letters patent or rights under the same, the number and date of the patents and the nature of the invention shall be given; which certificate shall be deposited in the office of the secretary of the State, who shall cause the same to be recorded, and a duplicate thereof shall be recorded in the town clerk's office of the town where said corporation is located. No such certificate shall be received or recorded by the secretary of the State, or by any town clerk, which shall fail to state that twenty per cent. or more, as the case may be, of the stock has been paid for in cash as required by this chapter.

See § 1944 and cross-references.

§ 1949. (As amended March 28, 1895.) Any joint-stock or private corporation having voted to change its corporate name, may apply to the superior court for the county in which it is located to have such change made, first giving notice of such intended application by advertisement for two weeks consecutively, in a newspaper published in Hartford or New Haven, and in a newspaper, if there be one, published in the town in which the corporation is located; and said court may change said name as prayed for, and upon filing in the office of the secretary of the State a certified copy of the order of the court, and a like copy with the town clerk of the town in which the corporation is located, which shall be recorded by said secretary and said town clerk, the name of such corporation shall thereafter be as decreed by said court; but no right existing at the time of such change in favor of or against such corporation shall be affected thereby.

Corporate name. See §§ 1905, 1944.

§ 1950. The property and affairs of every joint-stock corporation shall be managed by three or more directors, who shall be chosen annually by the stockholders, at such time and place as may be provided by its by-laws, who shall be stockholders in the corporation, and such directors may fill any vacancy which may happen in their board for the current year. The directors shall choose one of their number to be president,

## Corporate officers; change of business — Stat., § 1951.

and shall also choose a secretary and a treasurer, who shall reside in this State, and such other officers as the by-laws of the corporation shall prescribe, who shall hold their offices until others are chosen in their stead; Provided, That the treasurer of any joint-stock corporation carrying on any lawful business in this State not forbidden by this chapter, and out of this State whatever lawful business may be incidental to the business within it, may reside out of this State, in which case an assistant treasurer shall be appointed, who shall reside within this State; Provided, also, That the secretary and treasurer of any joint-stock corporation organized and doing business prior to March twenty-fifth, eighteen hundred and eighty, and the property of which is equal in value to one-half the amount of its capital stock as shown by its last annual return to the town clerk of the town in which such corporation is located, may reside out of the State, in which case an assistant treasurer shall be appointed, who shall reside within this State; and the assistant treasurer so appointed in either case, shall be the person on whom notices in all legal proceedings against the corporation may be served, and who instead of the treasurer may sign the certificate required by section 1953.

Offenses by officers, penalty. §§ 1567, 1579, 1580. Duties of secretary. § 1915. Personal liability of officers. §§ 1938, 1959. Process to be served on officers. §§ 908, 909. Officers to hold over. § 1920. Regulation of directorship. § 1922. Voting. §§ 1925-1927. Quorum, what is. § 1928. Return by officers for taxation. §§ 3827, 3828. Officers not to borrow money. Act of 1889, see p. 27.

[Secretary of a Connecticut corporation may reside and remain in another State. *McCall v. Mann*, 6 Conn. 437. Directors of Connecticut corporation may lawfully hold meetings in another State. *McCall v. Mann*, 6 Conn. 436. Under contract to repair road, it is enough to show that work was done to the acceptance of majority of directors. *Wadhams v. Turnpike Co.*, 30 Conn. 421.

Not necessary to validity of votes of directors that they be recorded, unless when it is required by charter or by-laws. *Goodwin v. Ins. Co.*, 24 Conn. 691.

Special meeting of directors of bank called, but no notice given of occasion for calling it. Held, that vote at such meeting authorizing execution of mortgage was valid. *Bank v. Davis*, 8 Conn. 200.

Fraudulent misrepresentations by directors of insolvent insurance company rendered them personally liable for loss. *Salmon v. Richardson*, 30 Conn. 373.

Innocent misrepresentations by director may be explained. *Calhoun v. Richardson*, 30 Conn. 226.

Corporation cannot be affected by knowledge of a director, unless he had it while acting officially or while exercising some special authority. *Foundry v. Dart*, 25 Conn. 382.

Directors not entitled to compensation for services, unless they are most unquestionably beyond the range of his official duties. *R. R. Co. v. Ketchum*, 27 Conn. 181. Nor for signing a guaranty on the faith of which the corporation was enabled to obtain large loans. *Butler v. Iron Co.*, 22 Conn. 358.

An individual stockholder cannot maintain an action at law against directors of corporation for

mis-managing its affairs or defrauding the corporation. *Allen v. Curtis*, 26 Conn. 460. Such directors are the agents of the corporation, and liable only to it for their acts. *Id.* But such stockholder may maintain petition in equity against directors for misconduct in office, where corporation is unable, or through fraud neglects, to seek redress. *Id.*

Neither the acts nor the knowledge of officer will bind corporation in a matter in which he acts for himself, and deals with corporation as if he had no official relations with it. *Platt v. Axle Co.*, 41 Conn. 265.

The president has no power, as such, to bind corporation by any act outside of his official duty; he may be its agent also, but such agency must be proved. *Perry v. Manuf. Co.*, 37 Conn. 534.

Corporation estopped to deny contract signed by its president, with knowledge of directors and managing officers, even though he had, in fact, no authority. *Perry v. Manuf. Co.*, 37 Conn. 534.

Corporation bound by acts of de facto secretary, such acts being authorized by practice of the company. *Peck v. Ins. Co.*, 22 Conn. 586.

Corporation not bound by unauthorized contract of secretary and treasurer, made without knowledge or consent of president and directors. *Fawcett v. Organ Co.*, 47 Conn. 226.

Quo warranto proceedings against person claiming to be director. Judgment for defendant. New trial could not be granted after expiration of term for which he claimed to have been legally elected. *State v. Tudor*, 5 Day (Sup. Ct.), 335.

Secretary elected "for the ensuing year" continues secretary de jure until successor is appointed. *McCall v. Manuf. Co.*, 6 Conn. 428.

Authority of agents of corporation need not be proved by corporate vote or seal. *Mann v. Pitkin*, 14 Conn. 187. Corporation bound by acts of its representative in court in same manner as any individual would be. *Id.*

Commissioners appointed by legislature to superintend building of bridge are not agents of bridge company. *Bridge Co. v. Granger*, 4 Conn. 460.

Agent of corporation appointed for one year, not authorized to convey by deed its real estate. *Stow v. Wyse*, 7 Conn. 219.

Agent, appointed by vote of directors, entered on record-book, to execute mortgage deed of real estate. Held, that appointment was valid, and that it was unnecessary to record vote with mortgage. *Bank v. Davis*, 8 Conn. 201; *Beckwith v. Manuf. Co.*, 14 id. 603.

Acts of turnpike gate-keeper admissible in evidence to prove contract of company. *Wadhams v. Turnpike Co.*, 30 Conn. 421. Also of draw-tenders to prove license by drawbridge company. *Toil Bridge Co. v. Betsworth*, 30 Conn. 330.

Declarations of insurance agent to vary a written contract. *Ins. Co. v. Jarvis*, 22 Conn. 148. Ratification by corporation as affecting personal liability of agent to third parties. *Hewitt v. Wheeler*, 22 Conn. 564.

Power given to committee to execute writings, extent of. *Reservoir Co. v. Chase*, 14 Conn. 139.

Railroad company not estopped by declarations of its chief engineer. *Williams v. R. R. Co.*, 39 Conn. 521.

Ratification of acts of agent of corporation in making contract in its behalf, may be implied by its acts. *Howe v. Keeler*, 27 Conn. 554.

Authority of general manager of business corporation to agree to pay for medical attendance upon person injured by fault of the corporation. *Swazey v. Union M. Co.*, 42 Conn. 559.]

§ 1951. The purpose for which any such corporation may be established may be changed by the stockholders, so as to specify any other lawful business in this State allowed by the provisions of section 1944; but before it shall commence business under amended articles, they shall be subscribed by stockholders, holding at least two-thirds of the whole stock, certified to, published and recorded as provided for the original articles.

Property; report of officers, etc.—Stat., §§ 1952–1957.

§ 1952. Every such corporation may hold any property, necessary or convenient for its purposes, including real estate and patent rights, and such other property as may be taken in payment of or as security for debts due to it.

Conveyances, how attested. § 2055.

See Powers, § 1906 (1), and cross-references.

§ 1953. The statements and books of every such corporation shall be kept in the town where it is located, and shall at all reasonable times be open for the inspection of any of its stockholders, and as often as once in each year a true statement of the accounts shall be made and exhibited to the stockholders.

Records may be proved by copy. § 1093.

[When mandamus will be issued to compel corporation to keep all its books in the place where it is located. *Pratt v. Cutlery Co.*, 35 Conn. 41; s. c., 3 Am. Corp. Cas. 163. The intention of the corporation can only be learned by the language of its recorded acts. *Bartlett v. Kingsley*, 15 Conn. 334.]

§ 1954. Every such corporation may increase or reduce its capital and the number and par value of the shares therein, at any meeting of the stockholders specially warned for that purpose, by a vote of stockholders holding at least two-thirds of the whole stock; and certificates of the increase or reduction of said capital or the number or value of said shares shall be made, filed, and recorded as provided in this chapter for original stock. Provided, That within thirty days after such reduction a certificate thereof, signed by a majority of the directors, shall be published two weeks successively in a newspaper published in the county where such corporation is located; and, Provided further, That in case of the reduction of the capital stock of any corporation by any mode which shall render such corporation insolvent, the stockholders assenting thereto shall be jointly and severally liable for all debts of the corporation existing at the time of such reduction, after judgment obtained against the latter and a return of execution unsatisfied; and in order to the validity of any vote reducing the stock, the record shall show the names of the stockholders voting such reduction.

Reduction of capital stock. §§ 1933, 1934. Executors, trustees, etc., may subscribe for increase in stock. Act of 1889, see p. 26. Issue of preferred stock. Act of 1893; see p. 30.

§ 1955. (As amended, L. 1889, chap. 64.) In case the capital stock of any joint-stock corporation shall be increased as provided in the preceding section, at least twenty per cent. of the amount added shall be paid to the corporation either in cash or in actual surplus earnings of the corporation, and the certificate of the increase hereinbefore re-

quired shall state the amount so paid, and the manner of payment, and shall not be received or recorded by the secretary of the State or any town clerk unless it contains such statement.

See § 1954, cross-references.

§ 1956. The president and secretary\* of every joint-stock corporation shall annually, on or before the fifteenth day of February or August, lodge with the town clerk of the town in which such corporation is located a certificate, signed and sworn to by them, showing the condition of its affairs as nearly as the same can be ascertained on the first day of December or January, or on the first day of June or July next preceding the time of making such certificate, in the following particulars, to-wit:

1. The amount of capital stock actually paid in.
2. The cash value of its real estate.
3. The cash value of its personal estate, exclusive of patents.
4. The amount of its debts.
5. The amount of its credits.
6. The name, residence, and number of shares of each stockholder.

And said town clerk shall record said certificate at length in a book to be kept by him for that purpose. And a duplicate of said certificate except the name, residence, and number of shares of each stockholder, shall also be made, sworn to, and lodged by them as aforesaid with the secretary of the State, which certificate shall be recorded at length by him in a book to be kept for that purpose.

[As to knowledge as to financial condition of a corporation and of entries on its books, chargeable to a director or officer, see *Northrup v. Bushnell*, 38 Conn. 510; *Bartholomew v. Farwell*, 41 id. 107.]

§ 1957. Any joint-stock corporation may remove its place of business from one town to another town in this State by a two-thirds vote in number and interest of the stockholders; but its president and secretary shall procure from the town clerk of the town from which it shall remove a certified copy of the record in said town of its articles of association, and all other records showing the state of its affairs, attach thereto their certificate that such corporation has thus removed, and immediately on such removal leave such copy and certificate in the office of the town clerk of the town to which said corporation is removed, which shall be recorded by him at full length; and said president and secretary shall cause a like certificate to be deposited with the secretary of the State, which shall be recorded by him; and within ten days after such removal, shall cause a copy of such certificate to be published in a newspaper published in the

\*Treasurer. Acts of 1889, chap. 65.



Improper dividends; officers' liability; transfers — Stat., §§ 1958-1961.

county in which such corporation shall be located; and in case of removal from one county to another, said copy shall be published in one newspaper in each of said counties.

**Banks, etc., not to change location, when.** § 1941.

[Corporation not confined by charter to a particular location, may change its location unless, perhaps, when done to avoid taxation. *Ferry Co. v. Middletown*, 40 Conn. 71. Residence of corporation. See *Wood v. Ins. Co.*, 13 Conn. 210. Constructive residence sufficient to give the courts jurisdiction. *Mfg. Co. v. Ins. Co.*, 2 Paine (U. S.) 516.]

§ 1958. If the directors of any such corporation shall declare or pay a dividend when it is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or that such dividend would render it so, the directors assenting thereto shall be jointly and severally liable for its debts due at the time of the declaration or payment as the case may be, of such dividend.

See § 1931, cross-references.

[Declaration of dividend creates a debt due from the corporation, to be paid within a reasonable time, which the directors cannot avoid or recall by a subsequent vote or by investing the profits in property for the use of the corporation. *Bears v. Spring Co.*, 42 Conn. 25. Equity will order the corporation to pay such dividend. *Id.*

Powers and status of insolvent corporation. See *Catlin v. Bank*, 6 Conn. 241; *Pondville Co. v. Clark*, 25 *id.* 101.

Where a corporation is sued by a stockholder for a dividend declared by the directors, and all the other stockholders have received and retained their dividends, it cannot be shown in defense that the dividend was not earned, and that its payment would withdraw a part of the capital. *Stoddard v. Foundry Co.*, 34 Conn. 543.

A corporation and its directors are trustees, and as such may be called into a court of chancery, either for an account or to restrain mismanagement, or to compel the declaration of dividends. *Pratt v. Pratt*, 33 Conn. 455. How such dividends shall be ascertained. *Id.*]

§ 1959. All officers of such corporation, who shall intentionally fail to perform any of the duties by law required of them, shall be jointly and severally liable for all its debts contracted during the period of such failure.

[The "debts contracted" must be debts of the corporation in favor of some one who gave it credit. *Armstrong v. Cowles*, 44 Conn. 48. Judgment against, obtained by a factorizing creditor on a scire facias, not such a debt. *Id.* Obligation of an officer's bond whose office is an annual one, does not extend beyond the year for which he was appointed, even though he hold over. *Welch v. Seamore*, 28 Conn. 359.

Rights and remedy lost by stockholder through laches. *Terry v. Lock Co.*, 47 Conn. 161.

Whether if the officers of corporation fail to conduct its business in conformity with law, it does not become, as respects debts due from it to its stockholders, a mere partnership, so that such stockholders must be postponed to outside creditors, quare. *Kellogg v. Rockwell*, 19 Conn. 459.]

§ 1960. The stock of every joint-stock corporation shall be transferred only on its

books in such form as the by-laws shall prescribe, and the corporation shall have a lien upon all the stock owned by any person or estate therein for all individual, joint, and partnership debts due it from him or such estate, and for any contingent liability to it as indorser, acceptor, guarantor, or surety upon any negotiable or commercial paper; and any corporation desiring to enforce such lien may give notice to such stockholder, his executor or administrator, and if there be none, his heir-at-law, that unless he shall pay his indebtedness to said corporation within three months it will sell said stock; and such corporation may prescribe by its by-laws the manner of giving notice required by this section, but the notice of sale shall in no case be given until the liability has become fixed.

See § 1923 and cross-references.

[Joint-stock company may claim a lien on the stock of one of its members, under this section, for money lent on interest, though lending money be no part of its ordinary and legitimate business. *Platt v. Axle Co.*, 41 Conn. 267. And equity will protect such lien as against third party to whom such stock has been pledged. *Id.*

Profits and surplus funds of a bank are a part of the stock itself until a dividend is declared, and will pass under that name in a transfer or bequest. *Phelps v. Bank*, 26 Conn. 272.

Uncollected interest and undeclared profit on stock are accessory to the principal, and pass by a general conveyance of it. *Spencer v. Higgins*, 22 Conn. 529.

A general assignment for the benefit of creditors does not, of itself, transfer the legal title to corporate stocks, which by the rules of the corporation are to be transferred in a different manner. *Dutton v. Bank*, 13 Conn. 497.

Delivery of stock certificate must be followed by a transfer on the books of the corporation, in order to protect the stock from attachment by the grantor's creditors. *Shipman v. Ins. Co.*, 29 Conn. 253.

Whether, where by-laws require transfers of stock to be made on the company books, a separate written assignment of stock conveys the legal title or only an equitable one, quare. *Colt v. Ives*, 31 Conn. 59.

Rights of pledgee of stock lost through laches. *Shipman v. Ins. Co.*, supra.

Construction of charter and by-laws as to transfers; actual record of transfers required. *Northrop v. Turnpike Co.*, 3 Conn. 549; *Turnpike Co. v. Bunnell*, 6 *id.* 558; *Manuf. Co. v. Smith*, 2 *id.* 583; *Manuf. Co. v. Pratt*, 9 *id.* 492; *Northrop v. Curtis*, 5 *id.* 250; *Colt v. Ives*, supra; *Van Sands v. Bank*, 26 Conn. 155.

An executory contract to transfer stock creates no lien upon it as against the attaching creditor or a trustee in insolvency. *Shipman v. Ins. Co.*, supra.

Overissue of stock by fraud of transfer agent. *Bank v. R. R. Co.*, 39 Conn. 267.

Mistake in transfer of stock on books of corporation will not affect title of bona fide purchaser, in good faith and for value, of such stock. *Keeney v. Mill Co.*, 39 Conn. 149.

A trustee under a voluntary assignment in insolvency takes only an equitable interest in stock held by the assignor. *Van Sands v. Bank*, supra.]

§ 1961. Such corporation may, at any time within three months after the time limited in such notice shall have expired, advertise, in a newspaper published in the county where such corporation is located, its intention to sell such stock, giving at least

Sale of stock; voluntary dissolution; conveyances — Stat., §§ 1962-1968, 2955.

three weeks' notice of the time and place of such sale; and at such time and place may sell at public auction so much of said stock as shall pay such indebtedness together with the necessary costs of sale.

Sale of stock for unpaid assessments. § 1929.

§ 1962. When the purchasers of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to them; and it shall be the duty of such delinquent stockholder to surrender so much of his stock as corresponds with such new issue.

§ 1963. When any such stockholder shall have made a transfer of his stock as security for his indebtedness to a third party and afterwards shall become a debtor to such corporation, it may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and may require the party holding a transfer or assignment of such stock to give a sworn statement to its treasurer of the amount for which such stock was pledged; and if he shall not give such a statement at or before the time such sale is to take place, he shall forfeit his lien.

§ 1964. Whenever any joint-stock corporation shall declare a dividend, it shall be the duty of the treasurer of such corporation, within ninety days after such dividend shall become due and payable, to give notice to any stockholder then entitled to, but who has not called for the same, by depositing in the post-office in the town where such corporation is located a written or printed notice, postage paid, addressed to him at his last known place of residence, that such dividend remains due and payable.

See § 1931, cross-references.

§ 1965. (As amended May 18, 1893.) The superior court in any county where any such corporation is located may wind up its affairs and decree its dissolution on the petition of its stockholders representing one-third of its stock, upon sufficient cause being shown, and may proceed in the manner provided in respect to the dissolution of corporations; Provided, That no limitation for the presenting of claims of creditors shall be less than four months, and the person or persons acting as receiver or receivers shall be required to send a copy of the notice of limitation to every known creditor of such corporation. And said court may, in its discretion, in lieu of decreeing the dissolution of said corporation, order the receiver to sell its property and franchises, and the purchasers thereof shall succeed to all the rights and privileges of said corporation, and may reorganize the same under the direction of said court.

Insolvent corporations. §§ 502, 506. Receivers of. §§ 1321, 1322. Winding up. §§ 1942, 1943.

[Preference to directors by insolvent corporation,

good in the absence of fraud. *Smith v. Skeary*, 47 Conn. 54. Necessary allegations of petition. *Neville v. Carriage Co.*, 47 Conn. 167. Above section construed. *Links v. Banking Co.*, 66 Conn. 277; s. c., 33 Atl. Rep. 1003.]

§ 1966. Whenever any joint-stock corporation shall vote to wind up its affairs and dispose of its property, the superior court in the county where such corporation is located may order the property to be sold at public auction upon the petition of the owners of one-sixth of its stock, and notice of such public sale shall be given in such manner as said court shall order.

See § 1965.

[Corporation having sold out its property and franchise, remained in existence for the purpose of suing for the recovery of the purchase price. *Bridge Co. v. West Port*, 39 Conn. 350.]

§ 1967. When any joint-stock corporation shall have failed for two successive years to make the annual statement required by this chapter, or any act in amendment thereof, it shall be the duty of the attorney for the State in the county where such corporation is located, upon the request of any stockholder or creditor, or upon his own motion, whenever he shall be of opinion that the public good requires such action, to apply to the superior court in said county for a dissolution thereof, which court, after due notice to all parties interested, may proceed to hear the matter, and for reasonable cause decree a dissolution of the corporation, and proceed in the manner provided in section 1965. But if it shall appear upon the hearing that the corporation is solvent, the court may limit a time within which such corporation shall file a statement of its condition, as prescribed by this chapter, and said order having been complied with, the court may dismiss such application and tax the costs thereof against such corporation.

[Forfeiture of franchise by non-user; waiver by legislature. *Bridge Co. v. River Co.*, 7 Conn. 43.]

§ 1968. Every joint-stock corporation shall pay to the secretary of the State, for the use of the State, the sum of one dollar for filing and recording each of the several certificates required by this chapter.

## TITLE L. LANDS. CHAPTER CLXXVI.

### Land Title.

Sec. 2955. Deeds to or by corporations, how witnessed.

§ 2955. Conveyances of real estate made to or by any corporation may be attested by witnesses interested therein, and may be acknowledged before properly authorized persons who are so interested.

See § 1906 (1).

[See *Foundry v. Dart*, 26 Conn. 376.]

## TITLE LXXVI. TAXATION.

## CHAPTER CCXLI.

## Assessment of Taxes.

- Sec. 3832. Property of corporations, how assessed.  
 3833. Real estate of corporations, how assessed.  
 3834. Where taxed.  
 3836. Shares of stock of certain corporations, where taxed.  
 3837. Cashiers or secretaries of corporations, returns by.  
 3838. Same; return of property held as security.  
 3839. Evasive transfer of stock, penalty for.  
 3840. Stockholders giving untrue residence, penalty.

§ 3832. The whole property of every corporation in this State, whose stock is not by law liable to taxation, and which is not required to pay a direct tax to the State in lieu of other taxes, and whose property is not by law expressly exempt from taxation, shall be set in its list and liable to taxation in the same manner as the property of individuals.

Taxation of franchises. Act of 1889, see p. 27.  
 Tax on investment companies. Act of 1889; see p. 28.

[Corporation existing under a special charter cannot acquire an immunity from taxation by prescription. *Toll Bridge Co. v. Osborn*, 35 Conn. 21.  
 Bank stock, where taxable. *Bank v. New London*, 20 Conn. 111. See *Osborn v. R. R. Co.*, 40 Id. 498.]

§ 3833. Real estate owned by any corporation not required for the transaction of its appropriate business, shall be taxable as provided in the preceding section, unless the same shall be specially exempted by law.

[Property of a corporation whose name had been duly changed was listed for taxation to it under its former name, in which name the legal title stood upon the land records. Held, that such course was proper. *Hartford v. Seminary*, 66 Conn. 475; s. c., 34 Atl. Rep. 483.]

§ 3834. The real estate of any such corporation shall be set in the list of the town in which it is situated, and the personal estate shall be set in the list of the town in which it has its principal place of business, or exercises its corporate powers; and when it shall have two or more establishments for transacting its business in different towns, school districts, or other municipal divisions, it shall be assessed and taxed for every such establishment, and for the personal property attached thereto, or connected therewith, in the town, school district, or other municipal division having the power of taxation in which such establishment is; and the stockholders of any corporation, the whole property of which is assessed and taxed in its name, shall be exempt from assessment or taxation for their stock therein.

[A foreign corporation owning real estate and transacting business in this State, is not a resident of the town where such real estate lies,

within meaning of statutes as to taxation. *Jones v. Bridgeport*, 36 Conn. 286.]

§ 3836. (As amended June 29, 1889.) Shares of the capital stock of any bank, national banking association, trust, insurance, investment, turnpike, bridge, or plank-road company, owned by any resident in this State, shall be set in his list, at its market value in the town in which he may reside; but so much of the capital stock of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its returns to the assessors.

See Act of 1889, at p. 35.

[The sum to be deducted, upon each share, in the tax-list of a shareholder, should bear the same proportion to the market value that the entire investment in taxable real estate bears to the entire surplus of assets above liabilities. *Batterson v. Hartford*, 50 Conn. 559.]

§ 3837. The cashiers or secretaries of all corporations, whose stock is liable to taxation, shall, on or before the twelfth day of October, annually, inform the assessors of each town of the names of the stockholders residing therein, and the amount of stock owned by each, as exhibited by the books of said corporations, on the first day of said October, so far as the residence of such stockholders shall be known to such cashiers or secretaries, and its market value during the month of September next preceding; and any such cashier or secretary, who shall neglect to furnish such information to the assessors of any town where said stock is liable to be taxed, shall forfeit fifty dollars to such town; but putting a letter into the post-office containing such information, postage paid, addressed to the assessors of any town where such owner resides, shall be a compliance with the provisions of this section.

§ 3838. (As amended March 17, 1897.) The cashier of each bank and national banking association, the treasurer of each savings bank, and the secretary of each corporation incorporated by the laws of this State, shall, upon the request of the assessors of any town, or of any city, or any borough, inform them of the name of any person therein who owns stock or bonds held by such corporation as collateral security for any indebtedness or liability, and the amount and description of such stock or bonds; and any such cashier, treasurer or secretary, who shall neglect to furnish such information to the assessors of any town, where said stock or bonds are liable to be taxed, shall forfeit one hundred dollars to said town, or to said city, or to said borough, as the case may be.

§ 3839. The owner of any share of the capital stock of any corporation, who shall transfer such share to another, with the intent of evading the provisions of this title, shall forfeit to the town in which he resides

one per cent. of the value of the stock so transferred.

§ 3840. When any owner or holder of any stock in any corporation, liable to taxation, shall represent, or cause to be represented, to its cashier or secretary that he is a resident of any other town than that in which he actually resides, and thereby causes said cashier or secretary to give information, as aforesaid, to the assessors of such other town, such assessors shall return the same to the comptroller within thirty days thereafter, and shall certify in such return that no such person is known to reside in said town; and the comptroller shall thereupon notify said cashier or secretary of the information given him by said assessors; and such stockholders shall forfeit to the State one per cent. of the value of such stock; and said cashier or secretary shall thereupon pay said forfeiture to the treasurer; and such corporation shall have a lien upon such stock for the amount so paid.

#### CHAPTER CCXLIV.

##### Special Taxes on Corporations.

Sec. 3916. Stock of non-residents in other corporations, how taxed.

3917. Corporations to have lien for tax paid on stock of non-residents.

3932. Penalty for failure to make returns.

3942. Suits for taxes and penalty not barred, when.

§ 3916. (As amended May 13, 1897.) The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall on the first day of October, annually, or within ten days thereafter, deliver to the comptroller a sworn list of all its stockholders, residing without this State on

said day, and the number and market value of the shares of stock therein, then belonging to each; and shall on or before the twentieth day of October, annually, pay to the State one and one-half per cent. of such value; and if any such cashier or secretary shall neglect to comply with the provisions of this section he shall forfeit to the State one hundred dollars, in addition to said one and one-half per cent. so required to be paid.

[By an act of June 6, 1893, above section does not apply to stock in investment companies.]

§ 3917. The corporations, mentioned in the two preceding sections, shall have a lien upon the stock of each non-resident stockholder, from the reimbursement of the sums so required to be paid by them, to the extent of one per cent. of the value of his stock as contained in said list.

§ 3932. Every person who shall fail to return to the comptroller, as prescribed in any of the preceding sections of this chapter, any statement required to be returned, shall forfeit five hundred dollars to the State; and every person or corporation, required by any section of this chapter to make any payment to the State, who shall fail to make it within the time therein limited, shall forfeit to the State twice the amount required for such payment.

§ 3942. No action, commenced by the State against any person or corporation for the recovery of any sum, in the nature of a tax, which he or it is required to pay by the provisions of this chapter, or for the recovery of the penalty for the non-payment thereof, shall be barred or defeated by reason of the omission or failure of the board of equalization to perform the duties required of them by this chapter.

### LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1888.

1. Authorizing executors, trustees, and others to subscribe for shares of increased capital stock.
2. Concerning discovery by parties in civil actions.
3. Concerning ex parte injunctions against stockholders.
4. Concerning trust estates.
5. Concerning borrowing of corporate funds of manufacturing corporations by officers or directors.
6. In relation to taxation of franchises of certain corporations.
7. Imposing a tax on investment companies.
8. Authorizing the issue of preferred stock.
9. Concerning the manufacture and sale of electricity.
10. Validating certain omissions and irregularities.
11. Concerning the dissolution of corporations.
12. Concerning receivers.
13. Enabling corporations to purchase stock of other corporations.
14. Concerning service of process on foreign corporations.
15. For the preservation of health of employees.
16. Concerning the winding up of affairs of corporations.
17. Creating a board of arbitration and mediation.
18. Concerning service of process on foreign corporations.
19. Validating certain omissions and irregularities.
20. Concerning blacklisting.
21. Relating to assessment of taxes.
22. Concerning fees for creating corporations.
23. Concerning service of process on corporations.
24. Validating certain irregularities.
25. Concerning claims for labor against corporations.

#### Act 1.

AN ACT concerning the powers of executors, trustees, and others.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. Whenever any executor, administrator, trustee, conservator, or guardian holds shares of the stock of any corporation as assets of the estate in his charge, and

## Miscellaneous acts of 1889.

there shall be an increase of the capital stock of any such corporation, such executor, administrator, trustee, conservator, or guardian may, with the consent of the probate court having jurisdiction of such estate, subscribe for and take the shares of the increased capital stock to which such estate may be entitled, or may sell and transfer to others the right to subscribe for such shares. (Approved March 14, 1889.)

Increase of capital stock. Statutes, §§ 1954, 1955.

**Act 2.**

AN ACT concerning discovery by parties in civil actions.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. In any civil action in the superior court, court of common pleas, district court, or city court, the plaintiff at any time after entry of action, and the defendant at any time after answer, may file a motion praying for a disclosure of facts, or production of papers, books, or documents material to the support or defense of the suit, within the knowledge, possession, or power of the adverse party, and such facts, papers, books, or documents, being disclosed or produced, may be given in evidence by the party filing such motion.

§ 3. If the party to an action is a corporation, the opposite party may examine the president, treasurer, secretary, clerk, or any director or other officer thereof, in the same manner as if he were a party to the suit.

(Approved March 20, 1889.)

**Act 3.**

AN ACT concerning ex parte injunctions against stockholders of corporations.

Be it enacted by the Senate and House of Representatives in general assembly convened:

No ex parte injunction shall be granted within ten days of the day for a stockholders' meeting of any private corporation, to restrain voting upon any shares of stock in such corporation, excepting that injunctions may be granted upon proper bond, as now required by law, to restrain voting upon such shares upon any matters excepting the organization of the meeting and its adjournment.

(Approved March 20, 1889.)

Method of voting. Statutes, §§ 1925-1927.

**Act 4.**

AN ACT concerning trust estates.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. When any executor, administrator, or trustee holds or shall hold shares of

stock in a private corporation, whose use or income belongs to one or more persons, and in which there is a remainder interest in another person or persons, all stock dividends made by such corporation shall belong to the trust fund, and shall not be deemed to be included in such use or income, unless the corporation making the stock dividend shall expressly declare the same to be divided from undivided earnings made since the formation of the trust.

§ 2. The right to subscribe for new stock in any private corporation held by any executor, administrator, or trustee, as aforesaid, shall belong to the fund, and shall not be deemed to be a part of the use and income of the stock.

§ 3. This act shall not apply to such express trusts as explicitly require that such stock dividends and such rights to subscribe be treated as part of the income of the stock.

(Approved March 29, 1889.)

See Statutes, § 1931, and cross-references.

**Act 5.**

AN ACT relating to private corporations.

Be it enacted by the Senate and House of Representatives in general assembly convened:

No officer or director of any manufacturing corporation shall borrow any of the funds of the corporation, or use the same for any purpose other than the business of the corporation, without paying interest to such corporation for the use of such money and without a majority vote of all the directors of such corporation, and without furnishing adequate collateral or other security for such loan.

(Approved June 11, 1889.)

See Statutes, § 1906 (4), and cross-references.

**Act 6.**

AN ACT in relation to the taxation of the franchises of certain corporations.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. Every business corporation, having a special charter from the general assembly of this State, and authorized to do and perform its principal business outside the limits of this State, and having a capital stock divided into shares, which shall hereafter receive authority from the general assembly to increase its capital stock, shall within six months after such authority has been given and before it shall have increased its capital stock, either in full or in part as thus authorized, pay to the treasurer of this State not less than one hundred dollars, and not more than five thousand dollars, as the same may be assessed and determined by the State board of equalization, upon the

basis of the full amount of increase of capital thus authorized.

§ 2. No certified copy of any amendments to the charter of such business corporation shall be issued by the secretary of state until the payment required by section one of this act has been duly made.

§ 3. The provisions of this act shall apply to any such business corporation which has received authority to increase its capital at this session of the general assembly.

§ 4. Section 1914 of the general statutes is hereby repealed.

(Approved June 11, 1889.)

Taxation of corporate property. See Statutes, §§ 2832 et seq.

### Act 7.

AN ACT imposing a tax on investment companies.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. Section thirty-eight hundred and thirty-six of the general statutes is hereby amended by inserting after the word "insurance," in the second line thereof, the word "investment," so that said section as amended shall read as follows: Shares of the capital stock of any bank, national banking association, trust, insurance, investment, turnpike, bridge, or plank-road company, owned by any resident in this State, shall be set in his list, at its market value in the town in which he may reside; but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its returns to the assessors.

§ 2. The term investment company as used in this act shall include all corporations described in section eighteen hundred and fifty-three of the general statutes.

§ 3. All debentures or other choses in action hitherto issued by any such investment company shall continue to be taxable or non-taxable according to the law at the time when same were issued, unless the same shall be made exempt from taxation as hereinafter provided; but all debentures or other choses in action hereafter issued by any such company shall be taxable in the hands of the holder, any provision in the charter of the company to the contrary notwithstanding, unless the same are made exempt from taxation as hereinafter provided; and no such company shall hereafter issue any of its own debentures which purport upon their face to be non-taxable unless they are made so under the provision of this act.

§ 4. No corporation organized under any special or general law of this or any other State or territory shall by its agents or otherwise engage or aid in any manner in this State in selling or negotiating any choses

in action made, issued, or guaranteed by any person or investment company chartered by or organized under the laws of this or any other State or territory and payment of which is secured by mortgages on real estate situated in any other State or territory, or secured by pledges of such mortgages, until it has procured from the State treasurer a certificate of authority so to act. Such certificates shall contain the names of the persons who are to be authorized to act in this State as the agents of said corporation, and shall continue in force for one year and shall authorize the persons named therein to sell or negotiate such choses in action, payment of which is secured by mortgage on real estate situated in any other State or territory, or secured by a pledge of such mortgages, or both, during said period of one year; Provided, however, That no such certificate shall be so issued to any such corporation whose stock is not taxed under the laws of this State until such corporation shall have executed and filed with the treasurer of the State, a bond with satisfactory surety in a sum of not less than five hundred dollars nor more than five thousand dollars, as said treasurer shall decide and approve, conditioned that said corporation shall make the returns and pay the taxes required by the provisions of this act.

§ 5. The treasurer, or if there be no treasurer then the secretary, of every corporation, unless its stock is taxed under the laws of this State, which shall be authorized to transact such business as provided in the preceding section, shall annually, within the first ten days of January, make a return to the comptroller of the State, under oath, showing the aggregate amount of all such choses in action as defined in section four of this act sold or negotiated by such corporation in this State during the year preceding the first day of January, and which were secured by mortgages on real estate situated in any other State or territory, or secured by pledges of such mortgages, and the amount of said bonds which before said sale or negotiation had been made exempt from taxation under the provisions of this act. And every such corporation shall annually, on or before the twentieth day of January, pay to the State a sum equal to one per centum on the aggregate amount of all such choses in action so sold or negotiated in this State during said year preceding the first day of January, deducting therefrom the amount of said bonds which before the sale thereof by said corporation had been made exempt from taxation under the provisions of this act. And said sum when so paid shall be in lieu of all other taxes in this State on the personal property of said corporation which is used exclusively in its said business in this State.

§ 6. Every person who is or may be hereafter engaged in the business of selling or negotiating choses in action, made, issued,

## Tax on investment companies — Act of 1889.

or guaranteed by any person or investment company chartered by or organized under the laws of this or any other State or territory, and payment of which is secured by mortgages on real estate situated in any other State or territory, or secured by pledges of such mortgages, shall be deemed an investment broker.

§ 7. No person shall act as an investment broker, until he has procured from the State treasurer a certificate of authority so to act, unless he is named in a certificate procured by a corporation under the provisions of section four of this act, and acts solely in his business as an officer or agent of said corporation. Such certificate shall be in substantially the same form, and continue for a similar period of time, as provided in said section four for certificates for the agents of corporations; but no such certificate shall be so issued until such broker shall have executed and filed with the treasurer of the State a bond with satisfactory surety in the sum of not less than five hundred dollars nor more than five thousand dollars, as said treasurer shall decide and approve, conditioned that said broker shall make the returns and pay the taxes required by the provisions of this act.

§ 8. (As amended June 14, 1893.) Every such investment broker shall annually, within the month of January, make a return to the comptroller of the State, under oath, showing the aggregate amount of all choses in action as defined in section six of this act, sold or negotiated by him in this State during the year preceding the first day of said January, and which were secured by mortgage on real estate situated in any other State or territory, or secured by pledges of such mortgages, and the amount of said bonds which before said sale or negotiation had been made exempt from taxation under the provisions of this act. And such broker shall annually, on or before the twentieth day of February, pay to the State a sum equal to one per centum on the aggregate amount of all such choses in action so sold or negotiated by him in this State during said year preceding the first day of January, deducting therefrom the amount of said bonds which, before the sale thereof by said broker, had been made exempt from taxation under the provisions of this act; but said broker shall not be required to include in his return, nor to pay any tax upon, any such choses in action which during said year he has sold while acting as an officer or agent of any corporation which has complied with the provisions of sections four and five of this act.

§ 9. (As amended June 14, 1893.) Any person may take or send to the office of the treasurer of this State, any bond, note, or other chose in action, except bonds and notes secured by mortgage on real estate situated in this State, and may pay to the

State a tax of one per centum on the face amount thereof for five years, or at the option of such person for a greater or less number of years at the same rate, and the treasurer shall thereupon endorse upon said bond, note, or other chose in action that the same is exempted from all taxation for the period of five years, or for such longer or shorter period as a proportionate tax therefor has been paid, which endorsement shall be duly dated and signed in the name and with the seal of the treasurer affixed. Said treasurer shall keep a record of such endorsements, with a description of such bonds, notes, or other choses in action, together with the name and address of the party presenting the same, and date of registration; and all bonds, notes, or other choses in action so endorsed shall be exempt from all taxation in this State during the period for which said tax is so paid; and the treasurer may, under such limitations and conditions as he may deem proper, authorize any person or corporation in any city or town in this State to receive the tax and make the endorsement provided for in this section; or any person may send to the office of the treasurer an attested copy of, or a description of, any bond, note, or other chose in action, except bonds and notes secured by mortgage on real estate situated in this State, in such form as the treasurer may prescribe, and may pay to the State treasurer a tax of one per centum on the face amount of any such bond, note, or chose in action, for five years, or at the option of such person for a greater or less number of years at the same rate; and the treasurer shall thereupon give such person paying such tax as aforesaid a receipt therefor describing such bond, note, or other chose in action, in such manner as shall in his judgment best identify the same, and certifying that the tax thereon at the aforesaid rate has been paid to the State for one or more years, as the case may be; and the bond, note, or other chose in action in said receipt described, shall thereupon become exempted from all taxation in this State for the period for which said tax has been paid as stated in said receipt, and the treasurer shall keep a record thereof as hereinbefore provided.

§ 10. Any investment broker, who without being first authorized by the State treasurer as provided in this act shall sell or negotiate any such chose in action as is described in sections four and six, and which have not been previously made exempt from taxation as provided in section nine, shall be fined not more than two thousand dollars, or imprisoned in the county jail not more than one year, or both. And the sale or attempt to sell by any such investment broker of every single bond or other chose in action shall be a separate offense under this act.

§ 11. (As amended, June 14, 1893.) The board of equalization shall meet at the

treasurer's office at the capitol, annually, on the first secular day of February, at ten o'clock in the forenoon, to examine and correct the returns and valuations required by the provisions of this act, and to hear any party making such return in regard to such valuations; and said board may adjourn from time to time within eight days next succeeding the first day of said meeting; and if any person shall not make such return as prescribed, or shall make any erroneous return, said board shall, at said meeting hereinbefore fixed, or at some adjournment thereof as aforesaid, make out, upon the best information which they can obtain, the statement required to be made and returned by such person; and a true copy of such statement as corrected or made out by said board shall be returned to each respective corporation or person; and the valuation, amount, and numbers contained in such statement shall be final, and the sums required by the provisions of this act shall be paid according to it.

§ 12. Every person who shall fail to return to the comptroller any statement required to be returned, as prescribed in any of the preceding sections of this act, shall forfeit five hundred dollars to the State; and every corporation or person required by this act to make any payment to the State, who shall fail to make it within the time hereinbefore limited, shall forfeit to the State twice the amount required for such payment.

§ 13. It shall be the duty of the assessors in every town to require all persons giving in tax-lists to sign, date, and deliver to them a sworn statement upon said list of the following form:

"I do hereby declare under oath that the foregoing list, according to the best of my knowledge, remembrance, and belief, is a true statement of all my property liable to taxation, and that I have included in said tax-list all bonds, notes, and other evidences of indebtedness, except such as are by statute exempted from taxation or are endorsed by the State treasurer as not at present liable to taxation in Connecticut, and which are now owned by me or held by me in trust, or which I am required by law to put into my said tax-list; and also all bonds, notes, or other evidences of indebtedness, and all shares of the capital stock of any corporation, the stock of which is taxable, which I have transferred as collateral security to any corporation. I also declare under oath that I have not conveyed or temporarily disposed of any estate for the purpose of evading the laws relating to the assessment and collection of taxes. Dated at — this — day of —, 18 —." Any person signing and delivering to the assessors a false statement of the foregoing form, shall be guilty of the crime of perjury, and subject to the punishment by law provided for said crime. Any

assessor failing to comply with the provisions of this section shall forfeit fifty dollars to any person suing therefor for each such act of neglect.

§ 14. Any provision of the law providing for different taxation or for an exemption from taxation and inconsistent herewith, whether contained in the general statutes or in the charter of any investment company incorporated by this State, is hereby repealed, and to that extent this act shall be an amendment to the charter of each of said companies; but it shall not be necessary for said companies, or any of them, to accept said amendment.

(Approved June 22, 1889.)

### Act 8.

AN ACT authorizing corporations to issue preferred stock.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. Any corporation in this State, not engaged in the business of either trust, insurance, buying or selling real estate, or banking or trading in bonds, notes, or other evidences of indebtedness, which has by law power to increase its capital stock, may so increase it by the issue of preferred stock, which shall be entitled to dividends of an agreed amount before any dividends are declared upon the stock already issued; and such dividends, if not paid in any one year, may be paid out of the earnings of subsequent years, if it be so provided in the vote authorizing such increase.

§ 2. No such issue of preferred stock shall be made unless authorized at a meeting of the stockholders duly warned for the purpose by a vote of stockholders holding not less than two-thirds of the stock of said corporation, and duly represented at such meeting; which vote shall determine the amount of preferred stock so to be issued, the number and value of the shares thereof, the dividends to be made thereon, and whether the same shall be cumulative or not.

§ 3. No certificates of such stock shall be issued until a majority of the directors shall have signed and sworn to a certificate of the increase of such capital stock, and the number and value of such shares, and the amount of the dividend which the same are entitled to receive, and whether cumulative or not, which certificate shall be in addition to those now required by law in relation to the increase of capital stock, nor until such certificate shall have been filed in the office of the secretary of state, who shall cause the same to be recorded, and a duplicate thereof



shall have been filed for record in the town clerk's office of the town where said corporation is located.

§ 4. Any joint-stock corporation, at the time it is organized, may provide for the issue of preferred stock in the articles of association, and the certificates of organization shall show the amount of preferred stock so issued; and any issue of preferred stock heretofore made by any joint-stock corporation is hereby ratified and confirmed.

§ 5. Any joint-stock corporation uniting with any other corporation may change the whole or any part of its stock into preferred stock by a two-thirds vote, as aforesaid, and increase its capital by the issue of common stock, upon filing the certificate thereof required by law.

(Approved May 5, 1893.)

#### Act 9.

#### AN ACT concerning the manufacture and sale of electricity.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. No person or corporation unless acting under the authority of the general assembly of this State, shall, in any city or town of this State, manufacture for sale any electricity for purposes of lighting or power; but this section shall not prevent such manufacture for the purposes of the business, or for the use of the manufacturer, or for the sale thereof to his tenants in the same premises where it is manufactured.

§ 2. This act shall not apply to any city or town whose population is less than fifteen thousand.

(Approved June 29, 1893.)

#### Act 10.

#### AN ACT validating certain omissions and irregularities.

Be it enacted by the Senate and House of Representatives in general assembly convened:

§ 6. In any case in which a private corporation, chartered or incorporated under the laws of this State, has, within two years after being chartered, organized under its charter, and which prior to the approval of this act has filed a certificate of organization in the office of the secretary of this State as required by law, but not within two years from the date of the approval of its charter as required by statute, the charter of such corporation shall not for that cause be deemed to be void, but is hereby ratified, validated, and confirmed, and all acts of such corporation done under, and in pursuance of, or by authority of such charter are

hereby validated and confirmed, and declared to be as binding as if said certificate of organization had been filed within the time prescribed.

§ 13. Private corporations which have been organized and are acting under charters granted by the general assembly of this State, or which have accepted amendments to their charters, or private corporations heretofore chartered which have failed to perfect their organization and have failed to file a certificate of organization or of acceptance of such amendments within the time prescribed by law, or have failed to accept amendments to its charter, and have failed to file an attested copy of such acceptance as required by section 1119 of the general statutes, may perfect such organization and file such certificate on or before October 1, 1893, and the charters of such corporation shall not for the reason that such organization has not been perfected or such certificate has not been filed be deemed void, but are hereby ratified, validated, and confirmed, and all acts of said corporation done under and in pursuance of or by authority of such charters are hereby validated and confirmed and declared to be as binding as if the organization had been perfected and certificates of organization had been filed within the time prescribed.

(Approved June 29, 1893.)

#### Act 11.

#### AN ACT concerning corporations.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. The provisions of chapter CXII of the Public Acts of 1893, concerning the dissolution of corporations, the sale of their property and franchises, or their reorganization, shall apply to any corporation existing under the laws of the State of Connecticut, whether the same be organized under the General Laws of the State, or under a special charter granted by the general assembly; Provided, however, That the superior court shall not have power in directing the reorganization of any corporation to add to or alter the provisions of the charter or articles of association of any such corporation, and any corporation originally organized under a special charter granted by the general assembly and reorganized under the provisions of this act, or the provisions of chapter CXII of the Public Acts of 1893, shall have such powers and only such powers as may be given by the terms of the special charter of the corporation.

§ 2. This act shall take effect from its passage.

(Approved April 3, 1895.)

**Act 12.****AN ACT concerning receivers of corporations and copartnerships.**

Be it enacted by the Senate and House of Representatives in general assembly convened:

The commencement of proceedings for the appointment of a receiver of a corporation or a copartnership shall dissolve all attachments and all levies of executions, not completed, made within sixty days next preceding, on the property of such corporation or copartnership; but if the property is subsequently taken from the receiver, so that it cannot be used for the benefit of the creditors of said corporation or said copartnerships, nor made subject to the orders of the court in the settlement of the affairs of said corporation or copartnership, or if the receivership shall be terminated by order of the court, pending the settlement of the affairs of the corporation or copartnership, said attachments and levies of execution shall revive, and the time from the commencement of such proceedings to the time when the receiver shall be dispossessed of the property, or the finding of the court that said property is not subject to the orders of said court, or when said trust shall be terminated, shall be excluded from the computation in determining the continuance of the lien created by such attachment; but the attaching or levying creditors shall be allowed the amount of their legal costs, accruing before the time of the appointment of a receiver, as a preferred claim against the estate of said corporation or copartnership, if their respective claims upon which the attachments are founded shall, in whole or in part, be allowed.

(Approved April 25, 1895.)

See § 502, and cross-references. Receivers. § 1321. Winding up. Act No. 16, at p. 33. See Act No. 23.

**Act 13.****AN ACT concerning corporations.**

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. Any corporation incorporated in this State, and not prohibited by any provision in its own charter or by the general statutes of this State, may acquire, purchase, and hold the stock or securities of any other corporation incorporated by or doing business under the laws of this State; and it may acquire, purchase, and hold its own stock; Provided, That no rights of any stockholder of a corporation that may have been passed upon by any court of this State shall be affected by this act, nor shall this

act affect the right of any party to any action now pending.

§ 2. The provisions of this act shall not apply to any savings bank, trust company, or life insurance company; and any corporation acquiring its own stock under the provisions of this act shall, within six months thereafter, file in the office of the town clerk where it is located, and in the office of the secretary of state, a certificate signed by its president and treasurer, stating the number of shares of its own stock so acquired.

§ 3. No corporation, under the provisions of this act, shall acquire and hold its own stock except with the approval of stockholders owning three-fourths of the whole capital stock, given at a stockholders' meeting warned and held for the purpose; and while so held, said company shall not vote upon such shares of its own stock, and no corporation shall purchase any shares of its own stock when it is insolvent; and the directors of every corporation purchasing its own stock when it is insolvent, and assenting to such purchase, shall be personally liable for any debts of such corporation existing at the time of such purchase.

§ 4. This act shall take effect from its passage.

(Approved May 17, 1895.)

**Act 14.****AN ACT concerning service of process upon foreign corporations.**

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. In actions against foreign corporations, service of process may be made upon the president, secretary, or any director or managing or general agent of such corporation; Provided, That this act shall not apply to any foreign corporation which shall have an agent or attorney, upon whom service of process may be made, duly appointed in conformity with the laws of this State.

§ 2. This act shall take effect from its passage.

(Approved June 1, 1895.)

See Act of 1895, at p. 35. Service of process. §§ 908 et seq.

**Act 15.****AN ACT for the preservation of the health of factory employes.**

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. Whenever the inspector of factories, on complaint of any person, after due

## Winding up corporations — Act of 1895.

investigation, shall find it necessary for the preservation of the health of the employees in any manufacturing establishment, factory, or mill in which is carried on the business of buffing, polishing, or grinding metals, or any operations in which an excessive amount of dust is generated, that the excessive dust resulting from operations should be removed from the atmosphere of the rooms or apartments used for that purpose, he shall, in writing, direct the person or persons or corporation owning or occupying said premises, or carrying on business in such premises, within three months from the date of said order, to introduce and operate such appliances or devices as may be necessary to remove, so far as the nature of the business will permit, such excessive dust or foreign matter from the atmosphere of such mill, factory or apartment used for the purposes aforesaid; Provided, such appliances or devices do not restrict or interfere with the aforesaid business or operations.

§ 2. Any violation of any proper order made or given by the inspector of factories, under the provisions of the preceding section, shall be punished in the manner provided in section 2269 of the general statutes.

(Approved June 14, 1895.)

## Act 16.

## AN ACT concerning the winding up of the affairs of corporations.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. The superior court in the county in which any corporation organized under or chartered by the laws of this State has its principal place of business, may, as a court of equity, on the complaint of any one or more of the stockholders owning or representing one-tenth or more in amount of the capital stock of such corporation, wind up its affairs, and dissolve it if said court shall find that the interests of such stockholders will be best protected by such action, or that such corporation for a period of ten years prior to the date of such application, has not both earned and paid dividends aggregating in the whole five per centum upon its capital stock, or has engaged in business unauthorized by its charter or articles of association, or that there has been any fraud or collusion or gross mismanagement in the conduct or control of such corporation which has resulted to the detriment of the other stockholders of said corporation; Provided, That in any action brought for such dissolution, said corporation or any stockholder or stockholders, other than the plaintiff or plaintiffs, whether original defendants or upon entering as defendants for

this purpose, may, upon written motion to the court, obtain a valuation of the whole capital stock of such corporation to be made by the court or by a committee appointed by the court, and upon such valuation such defendant corporation or stockholder or stockholders may, at their option, buy the plaintiffs' stock, as hereinafter provided, and pay therefor such proportion of such valuation as the par value of the plaintiffs' stock bears to the par value of the whole capital stock of such corporation. Within ten days after said valuation is made by the court or the report of the committee making such valuation is accepted by the court, the defendant or defendants who have applied for such valuation shall file with the clerk of the court a written notice whether they accept said valuation and elect to buy the plaintiffs' stock thereat, and, in case of acceptance, shall at the same time deposit with the clerk of the court the price of the plaintiffs' stock at such valuation. The plaintiff or plaintiffs shall thereupon, within ten days, file with the clerk of the court a written notice stating whether he or they accept said price, and in case of acceptance shall thereupon cease to have any interest in their said stock, and shall at the same time deliver to said clerk, their stock certificate or certificates with proper endorsements of transfer, and shall receive from said clerk the price of said stock so deposited with him. Upon the plaintiff or plaintiffs accepting said price and delivering their stock certificates, or refusing so to accept and deliver, said proceedings for dissolution shall be terminable at the motion of such defendant or defendants, and judgment may be entered in accordance with the foregoing provisions. In case of a failure on the part of all the defendants to accept said valuation or to make payment in accordance therewith within said time, said action shall proceed to final judgment, and all the expenses of such valuation, being taxed by the court, shall, if such valuation be accepted and such dissolution proceedings terminated, be paid by such corporation, but if such valuation be rejected by the defendant or defendants applying therefor, they shall pay the expense thereof taxed as aforesaid.

§ 2. For the purposes of this act, said court shall have jurisdiction of such complaint of any stockholder or stockholders owning or representing one-tenth or more in amount of the capital stock of such corporation, and of all questions arising in the proceedings thereon, and may, if it deem it necessary, appoint one or more receivers of the estate of said corporation and limit a time for its creditors to present their claims to such receivers, which time so limited shall not be less than three months from the date of such order, and direct public notice thereof to be given, and may make such orders and decrees in such proceedings as justice and equity require. All claims not

## Mediation and arbitration — Act of 1895.

presented within the time limited by said court shall be barred. Said receivers shall allow all just claims against said corporation, collect its debts, sell its property, and convert the same into money, and report their doings to said court as it may direct.

§ 3. Said court may, on complaint of any person aggrieved by such doings, grant such relief as the nature of the case may require, and may make such orders as to the doings of the receivers, their compensation and other expenses, and as to the payment of debts, and distribution of the effects of said corporation, as may be just and conformable to law.

§ 4. This act shall take effect from its passage.

(Approved June 26, 1895.)

Receivers. § 1321, cross-references.

### Act 17.

AN ACT creating a State board of mediation and arbitration.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. During each biennial session of the general assembly, the governor shall, with the advice and consent of the Senate, appoint a State board of mediation and arbitration, to consist of three competent persons, each of whom shall hold his office for the term of two years. One of said persons shall be selected from the party which at the last general election cast the greatest number of votes for governor of this State, and one of said persons shall be selected from the party which at the last general election cast the next greatest number of votes for governor of this State, and the other of said persons shall be selected from a bona fide labor organization of this State. Said board shall select one of its number to act as clerk or secretary, whose duty it shall be to keep a full and faithful record of the proceedings of the board, and also to keep and preserve all documents and testimony submitted to said board; he shall have power, under the direction of the board, to issue subpoenas, and to administer oaths in all cases before said board, and to call for and examine the books, papers, and documents of the parties to such cases. Said arbitrators shall take and subscribe to the constitutional oath of office before entering upon the discharge of their duties.

§ 2. Whenever any grievance or dispute of any nature shall arise between any employer and his employees, it shall be lawful for the parties to submit the same directly to the State board of mediation and arbitration. In case such parties elect to do so, and shall notify said board, or its clerk, in writing, of such election. Whenever such notification

to said board or clerk is given, it shall be the duty of said board to proceed, with as little delay as possible, to the locality of such grievance or dispute, and inquire into the cause or causes of the grievance or dispute. The parties to the grievance or dispute shall thereupon submit to said board, in writing, succinctly, clearly, and in detail, their grievances and complaints, and the cause or causes thereof, and severally promise and agree to continue in business, or at work, without a strike or lockout until the decision of said board is rendered; Provided, It shall be rendered within ten days after the completion of the investigation. The board shall thereupon proceed fully to investigate and inquire into the matter in controversy, and to take testimony under oath in relation thereto, and shall have power by its chairman or clerk to administer oaths, to issue subpoenas for the attendance of witnesses, and the production of books and papers.

§ 3. After a matter has been fully heard, the said board, or a majority of its members, shall within ten days render a decision thereon in writing, signed by the members of the board, or a majority of them, stating such details as will clearly show the nature of the decision and the points disposed of by said board. The decision shall be in triplicate, one copy of which shall be filed by the clerk of the board in the office of the town clerk or city clerk in the town or city where the controversy arose, and one copy shall be served on each of the parties to the controversy.

§ 4. Whenever a strike or lockout shall occur, or is seriously threatened in any part of the State, and shall come to the knowledge of the board, it shall be its duty, and it is hereby directed to proceed, as soon as practicable, to the locality of such strike or lockout, and put itself in communication with the parties to the controversy, and endeavor by mediation to effect an amicable settlement of such strike or lockout; and if, in the judgment of said board, it is best, it shall inquire into the cause or causes of the controversy, and to that end the board is hereby authorized to subpoena witnesses and send for persons and papers.

§ 5. Said board shall, on or before the first day of December in each year, make a report to the governor, and shall include therein such statements, facts, and explanations as will disclose the actual working of the board, and such suggestions as to legislation as may seem to it conducive to harmony in the relations between employers and employed, and to the improvement of the present system of production.

§ 6. Whenever the term of employer or employers is used in this act, it shall be held to include firm, joint-stock association, company, or corporation, as fully as if each of

## Foreign corporations; blacklisting — Acts of 1895.

the last-named terms was expressed in each place.

§ 7. The members of the board shall receive, as compensation for actual services rendered under this act, the sum of five dollars per day and expenses, upon presentation of their vouchers to the comptroller, approved by the governor.

§ 8. This act shall take effect from its passage.

(Approved June 28, 1895.)

**Act 18.**

AN ACT concerning service of process upon foreign corporations.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. Every foreign corporation transacting business in this State, having no secretary, cashier, or director resident in this State shall, within thirty days after the passage of this act, appoint by written power some competent person resident in this State as its attorney, upon whom all process against said corporation in this State, including the process of foreign attachment, may be served; and such attorney, in case of foreign attachment, when the fees therefor shall have been paid or tendered, shall have the right to make the affidavit required by law in such cases; and service of process made within this State upon such attorney shall have the same effect as if such corporation had existed and been duly served with process within this State.

§ 2. Such power of attorney, duly executed by such foreign corporation, shall be filed with the secretary of this State; and copies thereof, duly certified, may be received in evidence in all courts of this State; and said corporation shall pay a fee of five dollars to the secretary of this State at the time of filing such power of attorney, which fee shall be for the benefit of the State.

§ 3. In case of the death, resignation, or removal of said attorney, said corporation shall, within thirty days thereafter appoint another attorney in the place of the one so dying, resigning, or removed; and in the case of such death, resignation, or removal, a certificate of said fact shall be filed and recorded in the office of the secretary of this State.

§ 4. Every person who shall act within this State as the agent, officer, or employe of any foreign corporation which has failed to comply with the provisions of this act shall be fined not more than five hundred dollars nor less than fifty dollars.

§ 5. This act shall not apply to corpora-

tions described in sections 2905 and 3791 of the general statutes.

§ 6. This act shall take effect from its passage.

(Approved July 1, 1895.)

See Act of 1895, at p. 32. Service of process. §§ 908 et seq.

**Act 19.**

AN ACT validating certain omissions and irregularities.

Be it enacted by the Senate and House of Representatives in general assembly convened:

§ 10. Private corporations which have been organized and are acting under charters granted by the general assembly of this State, or which have accepted amendments to their charters, or private corporations chartered by the general assembly of 1893, or whose charters were amended at said session, which have failed to perfect their organization and have failed to file a certificate of organization or accept such amendments and file an attested copy of such acceptance, as required by section 1911 of the general statutes, may perfect such organization or accept such amendments and file such certificates on or before October first, eighteen hundred and ninety-five, and the charters of such corporations, or such amendments, shall not for the reason that such organization has not been perfected, or such certificate has not been filed, be deemed void, but are hereby ratified, validated, and confirmed, and all acts of said corporations done under and in pursuance of or by authority of such charters or amendments are hereby validated and confirmed and declared to be as binding as if organization had been perfected and certificates filed within the time prescribed.

(Approved July 9, 1895.)

**Act 20.**

AN ACT concerning blacklisting.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Every employer who shall blacklist an employe with intent to prevent such employe from procuring other employment shall, upon conviction, be fined not more than two hundred dollars.

(Approved May 25, 1897.)

**Act 21.**

AN ACT relating to the assessment of taxes.

Be it enacted by the Senate and House of Representatives in general assembly convened:

The cashiers or secretaries of all corporations whose stock is liable to taxation shall,

on or before the twelfth day of October, annually, inform the assessors of each city and borough of the names of the stockholders residing therein, and the amount of stock owned by each, as exhibited by the books of said corporation on the first day of said October, so far as the residence of such stockholders shall be known to such cashiers or secretaries, and its market value during the month of September next preceding; and any such cashier or secretary who shall neglect to furnish such information to the assessors of such city or borough where said stock is liable to be taxed shall forfeit fifty dollars to such town; but, putting a letter into the post-office containing such information, postage paid, addressed to the assessors of such city or borough where such owner resides, shall be a compliance with the provisions of this section.

(Approved June 2, 1897.)

#### Act 22.

AN ACT concerning fees to be paid to the State for the creation of private corporations.

Be it enacted by the Senate and House of Representatives in general assembly convened:

No bill or resolution affecting private interests only, other than appropriation bills or resolutions, shall be introduced in either branch of the general assembly until there shall have been paid to the treasurer of this State a fee of five dollars for each legal page or fractional part of a legal page of such bill or resolution for the use of the State, if the same becomes a law, otherwise such fee shall be returned to the person paying the same, which payment shall be endorsed upon the resolution by the treasurer and before the same is transmitted to the governor for his signature, and in the case of the application of a corporation having capital stock, before the governor approves thereof, there shall be paid an additional fee to the treasurer of this State equal to one dollar for each one thousand dollars of capital stock permitted by its charter, and upon any amendment increasing its capital stock a fee to the treasurer of a proportionate amount.

(Approved June 2, 1897.)

#### Act 23.

AN ACT concerning service of process on corporations and concerning receivers.

Be it enacted by the Senate and House of Representatives in general assembly convened:

Section 1. If any corporation organized under the laws of this State shall have no sec-

retary or director resident in this State, any judge, clerk, or assistant clerk of the superior court, court of common pleas, or district court to which is brought any action against said corporation, may authorize service of process in said action upon said corporation by advertisement, or may make such other or further order concerning such service of process as may be deemed reasonable, and service made in accordance with such order shall be deemed sufficient service of process upon said corporation.

§ 2. If any court of this State shall appoint a receiver of any corporation organized under the laws of this State, such receiver shall, under the order of the court, have the same power as the directors of such corporation, to call in the subscriptions to its capital stock in such proportions and at such times and places as he shall think necessary for the purpose of paying all the debts of said corporation and all the expenses of the receivership.

(Approved June 10, 1897.)

Receivers. § 1321 and Act No. 12. Service of process. §§ 908 et seq.

#### Act 24.

AN ACT validating certain irregularities and omissions.

Be it enacted by the Senate and House of Representatives in general assembly convened:

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§ 7. Private corporations which have been organized and are acting under charters granted by the general assembly of this State, and which have filed certificates of their organization after the time limited by their charter, or as required by sections 1910 and 1911 of the general statutes, or which have accepted amendments to their charters, or private corporations chartered by the general assembly of 1895, or whose charters were amended at said session, which have failed to perfect their organization, and have failed to file a certificate of organization, or accept such charters or amendments and file an attested copy of such acceptance, as required by section 1911 of the general statutes, may perfect such organization or accept such amendments and file such certificates on or before October 1, 1897, and the charters of such corporations, or such amendments, shall not, for the reason that such organization has not been perfected, or such certificate has not been filed, be deemed void, but are hereby ratified, validated, and confirmed, and all acts of said corporations done under and in pursuance of or by authority of such charters or amendments are hereby validated and confirmed

## Labor claims — Acts of 1897.

and declared to be as binding as if organization had been perfected and certificates filed within the time prescribed.

§ 18. This act shall take effect from its passage.

(Approved June 12, 1897.)

See Acts 10 and 19.

**Act 25.**

AN ACT concerning claims for labor against corporations and copartnerships.

Be it enacted by the Senate and House of Representatives in general assembly convened:

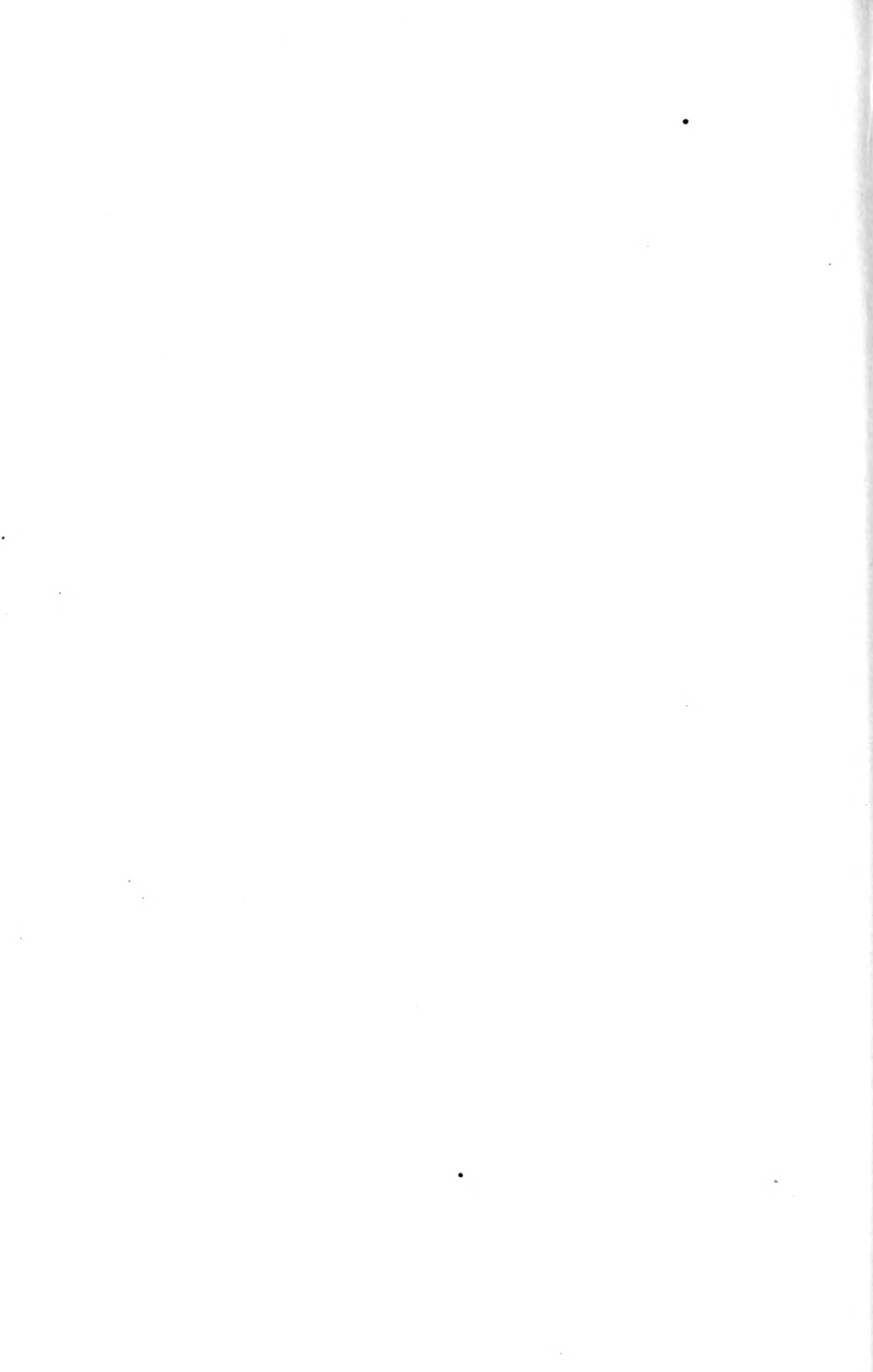
Section 1. All debts due to any laborer or

mechanic for personal wages, from any corporation or copartnership for which a receiver shall be appointed, for any labor performed for such corporation or copartnership within three months next preceding the service of the application for the appointment of a receiver, shall be paid in full by the receiver, to the amount of one hundred dollars, before the general liabilities of such corporation or copartnership are paid.

§ 2. Chapter CCXLII of the public acts of 1895 and all other acts or parts of acts inconsistent herewith are hereby repealed.

§ 3. This act shall take effect from its passage.

(Approved March 17, 1897.)





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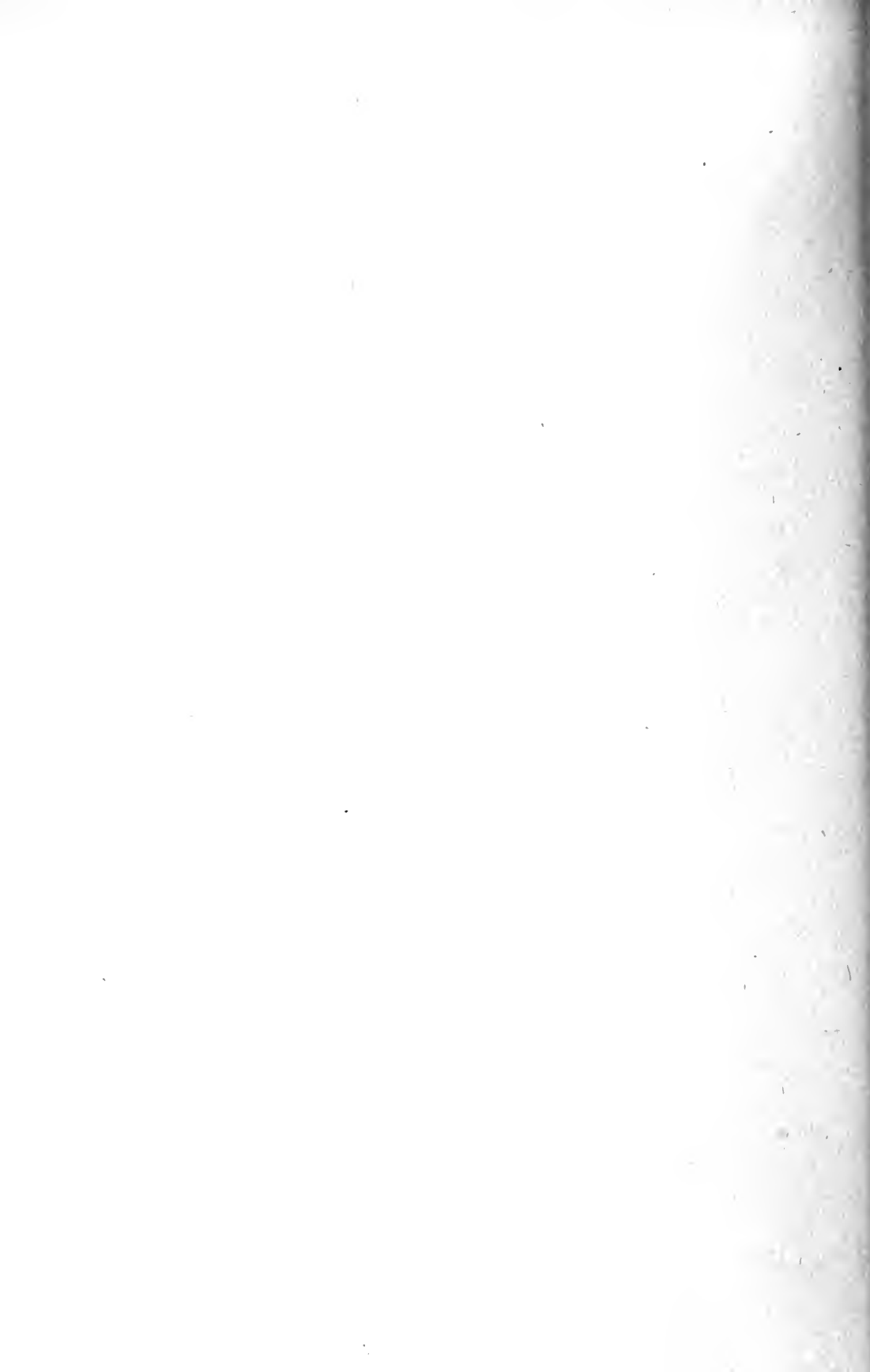
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DELAWARE.

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## **GENERAL LAWS.**

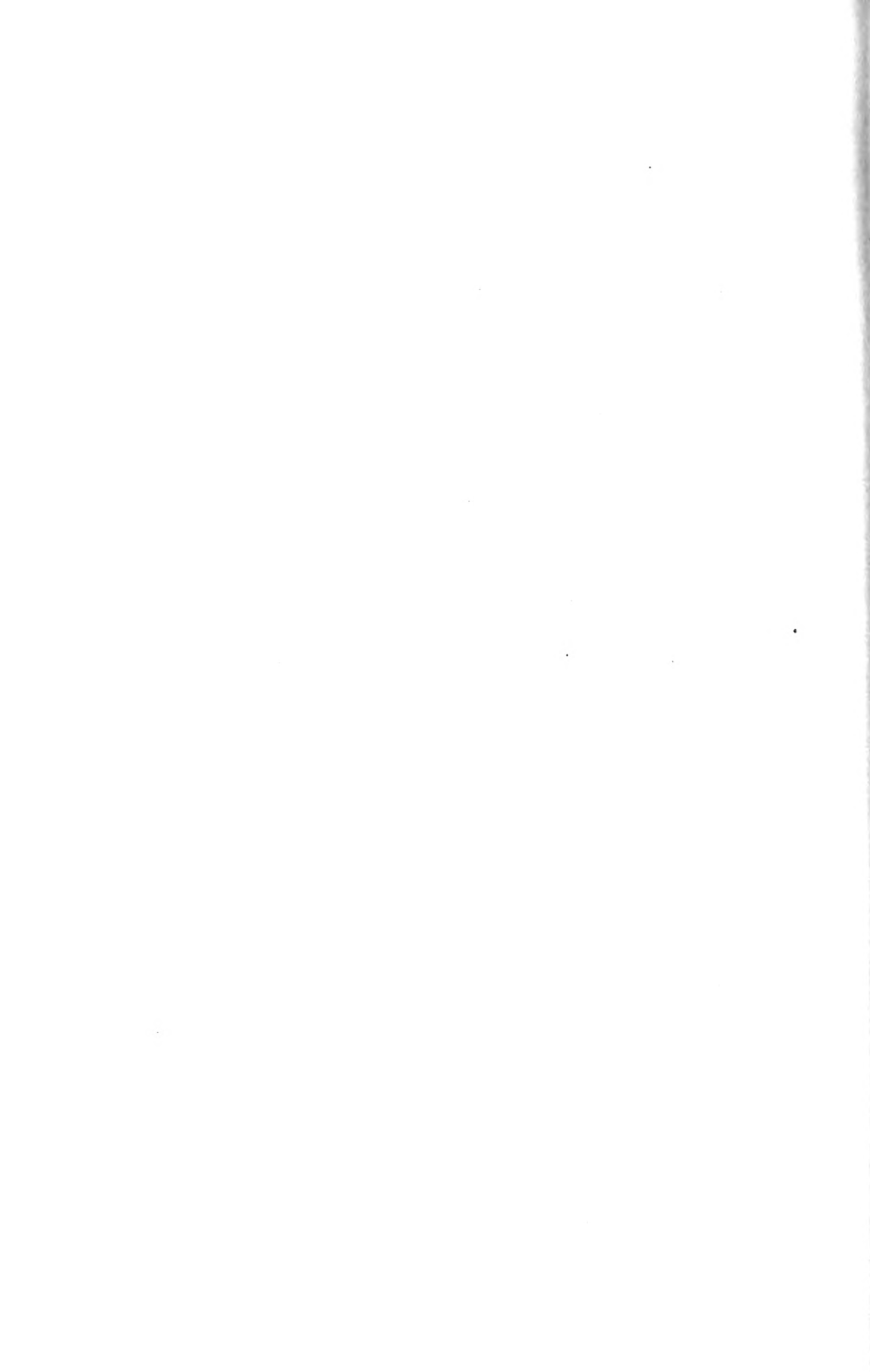
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# DELAWARE.

## CONSTITUTION OF DELAWARE — 1897.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Bill of Rights.

§ 8. No persons shall etc., \* \* \* nor shall any man's property be taken or applied to public use without the consent of his representatives, and without compensation being made.

#### ARTICLE VIII.

##### Revenue and Taxation.

Section 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, but the general assembly may by general laws exempt from taxation such property as in the opinion of the general assembly will best promote the public welfare.

§ 8. No county, city, town or other municipality shall lend its credit or appropriate money to, or assume the debt of, or become a shareholder or joint owner in or with any private corporation or any person or company whatever.

#### ARTICLE IX.

##### Corporations.

Section 1. No corporation shall hereafter be created, amended, renewed or revived by special act, but only by or under general law, nor shall any existing corporate charter be amended, renewed, or revived by special act, but only by or under general law; but the foregoing provisions shall not apply to municipal corporations, banks or corporations for charitable, penal, reformatory, or educational purposes, sustained in whole or in part by the State. The general assembly shall, by general law, provide for the revocation or forfeitures of the charters of all corporations for the abuse, misuse or non-user of their corporate powers, privileges or franchises. Any proceeding for such revocation or forfeiture shall be taken by the

attorney-general, as may be provided by law. No general incorporation law, nor any special act of incorporation, shall be enacted without the concurrence of two-thirds of all the members elected to each house of the general assembly.

Organization of corporations. Gen. L., ch. 70, § 3. General powers. Id., § 1.

Corporation continued three years for closing. Ch. 70, § 4. See ch. 152, vol. 11, at p. 9; ch. 702, vol. 19, at p. 20; General Laws, chs. 70 and 117.

[How far the legislature is restricted from passing any law impairing vested rights, or altering the charter of a corporation. See *Bailey v. R. R. Co.*, 4 Harr. 389, 399-401, 410.

The right of the legislature to bestow on corporations the power of internal regulation, and the power of corporations to receive and exercise such power, even though it involve legislative power within the corporate limits, exists at common law, and are recognized by the Constitution. *Rice v. Foster*, 4 Harr. 479, 503.

The power of the legislature to revoke corporate charters is reserved by the Constitution and need not be expressed in the charter. *R. R. Co. v. Tharp*, 5 Harr. 454, 456. But this is not an arbitrary power in the legislature to revoke charters for mere whim or caprice, but only upon cause. Id. Therefore a reservation, expressed in a charter, of the power of revocation, "on conviction of misuse or abuse of privileges," is a constitutional reservation. Id.

The police power of the State gives the legislature power to regulate the exercise of the corporate franchise by general laws, the purpose of which is to secure the peace, good order, health, welfare and comfort of society; but it cannot, under color of such law, destroy or impair the franchise itself, nor any of those rights and powers which are essential to its beneficial exercise, such as restricting the right of a railroad to adjust its tariff or charges. *R. R. Co. v. Bowers*, 4 Houst. 506.

Charters of corporations, excepting only those which are strictly civil or municipal, are within the clause of the United States Constitution which declares that no State shall pass any law impairing the obligation of contracts." Therefore, any act of the legislature which abridges any power or privilege vested by the charter which is material to the beneficial exercise of the franchise granted, without the reservation of the right to pass such an act, and without the consent of the corporation, is invalid as impairing the obligation of contracts. Id.; *Rice v. Foster*, 4 Harr. 479, 491, 492; *Bailey v. R. R. Co.*, id. 389, 399 et seq.]

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Corporations — Const., Art. ix, §§ 2-6.

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§ 2. No corporation in existence at the adoption of this Constitution shall have its charter amended or renewed without first filing, under the corporate seal of said corporation, and duly attested, in the office of the secretary of State, an acceptance of the provisions of this Constitution.

§ 3. No corporation shall issue stock, except for money paid, labor done or personal property, or real estate or leases thereof actually acquired by such corporation; and neither labor nor property shall be received in payment of stock at a greater price than the actual value at the time the said labor was done or property delivered, or title acquired.

§ 4. The rights, privileges, immunities and estates of religious societies and corporate

bodies, except as herein otherwise provided, shall remain as if the Constitution of this State had not been altered.

§ 5. No foreign corporation shall do any business in this State through or by branch offices, agents or representatives located in this State, without having an authorized agent or agents in the State upon whom legal process may be served.

See Act of 1897, at p. 25.

§ 6. In all elections for directors or managers of stock corporations each shareholder shall be entitled to one vote for each share of stock he may hold.

## GENERAL LAWS — 1893.

## TITLE X. OF CORPORATIONS.

## CHAPTER LXX.

## General Provisions Respecting Corporations.

- Sec. 1. General corporate powers.  
 2. Powers continued.  
 3. Mode of organizing.  
 4. All charters extended three years for closing.  
 5. Bonds of corporate officers to be taken every six years.  
 6. Mode of suing corporations. Service of process; and of rule.  
 7. Service of process on officers out of the State.  
 8. Notice of motions, rules, etc., service.  
 9. Franchise of toll may be sold for debt. Notice of sale.  
 10. Mode of sale; return; title; proviso.  
 11. May be attached on mesne process.  
 12. Distress for damages recovered.  
 13. Stock held in a corporation may be attached for debt. Notice of sale of such stock.  
 14. Copy of the process to be left with the company. Company shall certify the shares held.  
 15. Transfers after attachment void. Copy of return of sale transfers the title. No order of sale shall be made before judgment.  
 16. Application of proceeds of sale.  
 17. Where proceedings may be had. Additional acts.

Section 1. All corporations shall, where no other provision is specially made, be capable in their corporate name to sue and be sued, appear, prosecute and defend to final judgment and execution, in all courts, or elsewhere; to have a common seal which they may alter at pleasure; to elect necessary officers and define their duty and compensation; to make by-laws, consistent with the laws of this State, for their own government and the management of their property, to hold property, real and personal, for the purposes of their incorporation, and to convey the same.

By-laws may provide for what. § 2. Bonds of officers. § 5. Mode of suing corporations. § 6. Service of process. §§ 6, 7. Attachment of stock. §§ 13-17. Corporate powers enumerated. See ch. 147, vol. 17, at p. 9.

§ 2. They may, if no other provision is specially made, determine by their by-laws, how meetings shall be called and conducted; how many shall be a quorum; the number of shares that shall entitle the members to

one or more votes; the mode of voting by proxy; when and how shares shall be sold for non-payment of assessments; and may annex suitable penalties to such by-laws, not exceeding, in any case, twenty-five dollars, for any offense.

Meetings of corporations. Ch. 147, vol. 17, §§ 27, 28. Elections, how conducted. *Id.*, §§ 23-26.

§ 3. If not otherwise provided, the first meeting shall be called by one or more of the persons named in the act of incorporation, of the time, place and purposes of which meeting ten days' notice shall be given in a newspaper of the State; or in case of religious societies, by advertisement at the front door of their usual place of worship.

Meetings. See ch. 147, vol. 17, §§ 27, 28.

§ 4. All corporations whose charters shall expire, or be annulled, shall nevertheless continue for three years thereafter, to enable them to close their concerns, and for all other purposes, except the continuance of the business, or purpose for which they were created.

Existence limited to twenty years. Const., art. 11, § 17.

§ 5. The directors, or managers, of any bank, or corporation, are required to take from each officer thereof who, by the charter, or by-laws, is required to give bond, a new bond at least every six years, so that the date of the new bond shall not be more than six years after the date of the bond immediately preceding.

## Suits.

§ 6. Suits may be brought against any corporation, at law by summons, and by subpoena in chancery. Process may be served on the president or head officer, if residing in the State, and if not, on any officer, director, or manager of the corporation; and if such corporation shall appear, the suit shall proceed as in other cases, and if it shall not appear, the plaintiff shall have judgment by default, or pro confesso decree, service of the process being first proved. In a suit upon the note of a bank, payable at one of its branches, service of process upon

the president, or cashier, of that branch, shall be sufficient. Copies of any rules of court, notice, proceeding, or order, may be served in the same way as original process, or upon the attorney of record.

A corporation may be sued. § 1, ante; ch. 147, vol. 17, § 1 (11), and note. Actions not to abate. *Id.*, § 40. Pleadings and practice. Ch. 106, at p. 23. Franchise may be sold. § 9, post.

§ 7. In any suit against a corporation whose officers reside out of the State, process may be served by publishing the substance thereof in a newspaper of this State, and of the State where the head officer resides, twenty days before the return thereof, and such service shall be sufficient.

§ 8. In respect to such corporation, ten days' notice of any motion, rule, order, or other matter, or proceeding, shall be sufficient. And such notice may be served personally on the president, or any director, or manager, or on the attorney of said corporation, or by copy of the rule, or other matter, sent by mail to the president, or head officer, at his usual place of abode, or by publishing the same in a newspaper near thereto.

Rules of practice. See ch. 106, p. 23.

#### Sale of Franchise.

§ 9. When a judgment shall be recovered against any corporation authorized to receive toll, the franchise of such corporation, with all the rights and privileges thereof, so far as relates to the receiving of toll, as well as all the corporate property, real and personal, may be taken in execution of such judgment, and sold at public vendue, on due notice by advertisement, and also by publication in a newspaper of the State. Such sale may be adjourned from time to time, not exceeding ten days at any one time.

Franchise may be attached. § 11, post.

§ 10. At such sale, the person who will pay said execution and all legal costs and expenses thereon, and take the said franchise for the shortest time, shall be considered the highest bidder; and the officer's return to the execution, shall transfer to such purchaser all the privileges and powers which belonged to said corporation, so far as relates to the right of taking toll; and the officer selling shall, forthwith, put the purchaser in possession of all toll-houses, or gates, belonging to the corporation, in any county of the State; and such purchaser shall be entitled to demand and receive all tolls that may accrue during the term of his purchase, in the same manner as the corporation was authorized to have the same; Provided, That the corporation shall, in all other respects, retain the powers and be lia-

ble to the duties conferred, or imposed, by their charter; And Provided also, That said corporation may, within three months from the sale, redeem the said franchise by paying to the purchaser the amount paid by him, with twelve per cent. interest thereon.

#### Attached on Mesne Process.

§ 11. The said franchise of toll, with all its rights and incidents, shall also be liable to be attached on mesne process; and such process shall be served by an attested copy, with the officer's return thereon being left with the treasurer, clerk, or some director of the company, thirty days before the return day thereof.

§ 12. When any damages shall have been assessed against a corporation, by verdict, inquest, or otherwise, for injury done to property, if such damages shall remain unpaid for one month after the final acceptance of such report, or verdict, the party to whom such damages are assessed shall, on application, be entitled to a warrant of distress against said corporation for said damages, and interest thereon, and costs; which warrant may be executed in the same manner as hereinbefore provided for the levying and satisfaction of executions.

#### Attachment of Stock.

§ 13. The shares of any person in any incorporated company, with all the rights thereto belonging, may be attached for debt, or other demands; and so many of said shares may be sold at public vendue, to the highest bidder, as shall be sufficient to satisfy the debt, or other demand, interest and costs, upon an order issued therefor by the court from which the attachment process issued, and after such notice as is required for sales upon execution process. If the debtor lives out of the county, a copy of the advertisement shall also be forwarded by mail to his address ten days before the sale, and shall be published in a newspaper printed in the county of his residence, if there be any.

See §§ 14-17, and ch. 90, vol. 14, at p. 9. Corporation subject to attachment and garnishment. See ch. 182, vol. 15, at p. 23.

§ 14. When stock shall be so attached, a certified copy of the process shall be left by the officer with the president, cashier, or treasurer of the company, who shall give such officer a certificate of the number of shares held, or owned, by the debtor in such company, with the number, or other marks, distinguishing the same, anything in the charter, or by-laws of said company, to the contrary notwithstanding.

§ 15. If the shares of stock, or any of them, be sold as aforesaid, any assignment, or

Attachment: canning companies — Laws, ch. 90, v. 14, ch. 152, v. 14.

transfer thereof, by the debtor, after attachment so laid, shall be void; and if, after sale made and confirmed, a certified copy of the order of sale and return be left with such president, cashier, or treasurer, the purchaser shall be thereby entitled to the shares so purchased, and all income, or dividends, which may have been declared, or become payable thereon since the attachment laid; and such sale, returned and confirmed, shall transfer the shares sold to the purchaser, as fully as if the debtor, or defendant, had transferred the same to him according to the charter and by-laws of the company; anything in said charter, or by-laws, to the contrary notwithstanding; Provided, That no order of sale shall be issued until after final judgment shall be rendered in any case.

§ 16. The money arising from the sale of such shares shall be supplied and paid, by the officer receiving the same, as by law is directed as to the sale of personal property in cases of attachment.

§ 17. Any proceedings under this chapter may be had in any county in which either the creditor, or the president, cashier, treasurer, or any director of such corporation may reside, or in which there may be a toll-house, or gate, of such company.

#### ADDITIONAL ACTS.

1. To declare certain corporations subject to attachment laws.
2. Authorizing incorporation of companies for canning purposes.

#### Chapter 90, Vol. 14.

##### AN ACT concerning corporations.

Section 1. That all corporations (doing business in) this State, except banks, saving institutions and loan associations, shall be and they hereby are declared subject to the State of Delaware, as already provided in the case of individuals; (but insurance companies shall not be liable to attachment except only as to moneys due in consequence of the happening of the risk provided for in the policy of insurance,) and said corporations shall be summoned as garnishee, for which purpose service of the summons upon the president, treasurer, cashier, or paying clerk, as provided in other attachment cases, shall be sufficient to render said officers and the corporation subject to all the liabilities provided by the aforesaid laws, and the answer of the officers so served with attachment process shall be enforced in the same manner as is now provided by law in cases where an individual was summoned as garnishee.

(Passed at Dover, March 23, 1871.)

See ch. 70, §§ 13-17; ch. 182, vol. 15, at p. 23.

#### Chapter 152, Vol. 14.

AN ACT authorizing the incorporation of companies for canning, manufacturing and preparing fruits and other products of the State for sale.

Section 1. That any five or more persons may become incorporated for the purpose of drying, canning, manufacturing and preparing fruits and other products of the State for sale, by stating their corporate name, amount of capital, (which shall not be less than ten thousand dollars, nor more than one hundred thousand dollars), and their principal place of business, and certifying the same to the recorder of deeds of the county where such place of business is established.

§ 2. That all corporations thus formed shall be subject at all times to the general provisions of the laws of the State, applicable to such corporations.

(Passed at Dover, March 21, 1871.)

#### Chapter 147, Vol. 17, Laws of Delaware.

##### AN ACT concerning private corporations.

- Sec. 1. Corporate powers enumerated.  
 2. Applicable to all future corporations.  
 3. Powers not conferred.  
 4. Liability of stockholders.  
 5. Additional powers to corporations organized to reclaim low lands.  
 6. Building and loan association may sell accumulated funds at a premium.  
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 8. This act applicable to all corporations.  
 9. Applicable to any corporation organized under any general law.  
 10. Who may become incorporated.  
 11. Certificate; contents, how executed, etc.  
 12. Publication and filing of certificate.  
 13. Certificate as evidence.  
 14. When incorporated; proviso.  
 15. Subsequent corporations may exercise powers herein granted.  
 16. Place of business out of the State; proviso.  
 17. Business, how and by whom conducted. Officers, how chosen, etc.  
 18. Proxies; notice of first meeting; increase of stock.  
 19. Assessments. How enforced.  
 20. Certificate of officers of stock paid in; liability of officers.  
 21. Dissolution; duty of directors, etc.  
 22. List of stockholders, how kept.  
 23. Elections, how conducted.  
 24. Jurisdiction of superior court.  
 25. New election may be held.  
 26. When by-laws regulating elections valid.  
 27. Meetings. Where held.  
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 32. In case of dissolution, trustees' powers.  
 33. Trustees' liabilities.  
 34. Corporate existence continued for certain objects.  
 35. Jurisdiction of the chancellor.  
 36. Same.  
 37. Debts. How adjusted. Distribution.  
 38. Lien for wages. "Laborers," what to include.  
 39. Title to real and personal estate, in whom vested.

## Corporate powers — Laws, ch. 147, v. 17, § 1.

- Sec. 40. Civil action not to abate.  
 41. When action on the case will lie.  
 42. When company liable.  
 43. When provisions of this act applicable to existing corporations.  
 44. How time of charter may be extended.  
 45. Provisions relating to stockholders include members.  
 46. Secretary of State to collect State tax.

Section 1. That every corporation, as such, shall be deemed to have power:

I. To have succession, by its corporate name, for the period limited in its charter or certificate of incorporation, not exceeding twenty years, and when no period is limited, for twenty years, except corporations created by act of assembly for public improvement;

See ch. 70, §§ 1, 2.

II. To sue and be sued, complain and defend in any court of law or equity;

Franchise may be sold on execution. Ch. 70, §§ 9, 10. And attached. § 11. Mode of suing corporation. Ch. 70, §§ 6-8. See §§ 40, 41, post, and ch. 106, p. 23.

[Corporations are entitled to the same protection to their property as are individuals. *Smyrna, etc., Co. v. Whildin*, 4 Harr. 228.

Civil corporations, whether public or private, are subject to the general law of the land, and amenable to the judicial tribunal for the proper exercise of their powers. *State v. City*, 3 Harr. 294, 299.

Assumpsit will lie against a corporation. *Wilson v. Mfg. Co.*, 2 Harr. 67, 70.

A corporation can make contracts in other States, and may be sued by service on its agencies in other jurisdictions. *Derringer's Admr. v. Derringer's Admr.*, 5 Houst. 416, 431.

Where the president of a corporation which has no seal, executes articles of agreement as president, under his hand, and a common scroll for a seal, covenant will lie neither against him personally nor against the company. *McCaulley v. Jenney*, 5 Houst. 32. But if it was done with the sanction and consent of the company, the company might be liable in another form of action. *Id.*

Trover will lie for a corporate certificate of stock in an incorporated company. *Stewart v. Bright*, 6 Houst. 344 et seq.

No action will lie on a stock subscription, where the terms of the subscription contain no promise to pay, and the charter only authorizes a forfeiture of stock for non-payment. *Odd Fellows, etc. v. Glazier*, 5 Harr. 172 et seq.

A corporation cannot be summoned as a garnishee. *Holland v. Leslie*, 2 Harr. 306. When a corporation holds money belonging to an individual, a creditor of the latter might, perhaps, go into equity and stop the money in the hands of the corporation, if there is insolvency and danger of losing the money. *Id.*

Corporation books are evidence in a suit between the company and a corporator. *Jefferson v. Stewart*, 4 Harr. 82.

The by-laws of a corporation are evidence to show the liability of its officers, though they be not members of the corporation. *Bank v. Wollaston*, 3 Harr. 90.

The court cannot presume a by-law of a corporation, although upon an issue of fact depending before them they may instruct the jury to find one, upon evidence of long and ancient usage. *State v. City*, 3 Harr. 294 (300).

A corporation created by statute in another State to administer on the estate of deceased persons in that State, having done so, may sue

as such administrator in the courts of this State for a debt due the decedent in this State. *Derringer's Admr. v. Derringer's Admr.*, 5 Houst. 416 (423).

In an indictment for larceny, where the ownership of the property is in an incorporated company, it need not be averred that such company was a corporation in this State, nor proof made by the production of its charter or a legal copy thereof that it was such at the time the offense was alleged to have been committed. *State v. Fitzpatrick*, 9 Del. 385; s. c., 32 Atl. Rep. 1072.]

III. To make and use a common seal, and alter the same at pleasure;

[A seal is no more necessary to render valid the act and contract of a corporation, than it would be in the case of an individual; and where the latter would be bound without a seal, so will the corporation. *Derringer's Admr. v. Derringer's Admr.*, 5 Houst. 416 (427); *Bancroft v. Wil. Conf. Acad.*, id. 577 (579 et seq.); *Vandergrift v. R. R. Co.*, 2 id. 287 (298).

No words of intestinonum, nor any words referring to the seal at all, are necessary to the validity of an instrument under seal of a corporation. *Couine v. R. R. Co.*, 3 Houst. 288 (298).

When the common seal of a corporation appears to be affixed to an instrument, and the signature of a proper officer is proved or admitted, this is prima facie evidence that the seal was affixed with proper authority; and, although it may be controverted, the burden of proof rests on the party objecting to it. *Couine v. R. R. Co.*, 3 Houst. 288 (296, 297).

In an action of covenant against a corporation a contract made and executed by a committee of the board of directors, but not under the corporate seal, is not evidence, although the contract was actually recognized and acted upon by the company. *Randel v. Canal Co.*, 1 Harr. 233 (285).]

IV. To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in its charter, and all other real estate which shall have been bona fide mortgaged to the said company by way of security, or conveyed to them in satisfaction of debts previously contracted in the course of dealings, or purchased at sales upon judgments or decree which shall be obtained for such debts; and to mortgage any such real or personal estate with their franchises; the power to hold real and personal estate shall include the power to take the same by devise or bequest, excepting when the same is forbidden by law in certain cases; Provided, however, That nothing herein contained shall prohibit manufacturing or trading corporations from accommodating their customers by making payments or disbursements out of any sum of money received from such customers;

V. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation;

[Notice to, or knowledge of, the authorized officer or agent of a corporation, binds the principal. *Bank v. Tweed*, 4 Houst. 225 (232).

A corporation is bound by the acts of its agents within scope of his authority. *Richardson v. Loan Assn.*, 9 Del. 354; s. c., 32 Atl. Rep. 980. And also by acts without the scope of this au-



Corporate power: drainage — *Id.*, §§ 2-5.

thority, if such acts be in any way recognized by the corporation as valid. *Id.*]

**VI.** To make by-laws not inconsistent with the Constitution or laws of the United States or of this State, fixing and altering the number of its directors for the management of its property, the regulation and government of its affairs, and for the certification and transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars;

See § 26, post.

[The by-laws of a corporation are evidence to show liability of its officers, though they be not members of the corporation. *Bank v. Wollaston*, 3 Harr. 90. The court cannot presume a by-law of a corporation, although upon an issue of fact depending before them they may instruct the jury to find one, upon evidence of long and ancient usage. *State v. City*, 3 Harr. 294 (300).]

**VII.** To wind up and dissolve itself, or be wound up and dissolved in the manner hereafter mentioned.

See §§ 21 and 32 et seq., of this act.

[Upon the expiration of the period of its charter, a corporation becomes absolutely dissolved, and not merely dormant; its real estate reverts to the grantor, its personal estate vests in the people, and the debts to and from the corporation become extinguished; nor will those debts be revived by a legislative enactment reviving the extinct corporation. *Bank v. Lockwood's Admr.*, 2 Harr. 8.]

§ 2. The powers enumerated in the preceding section shall vest in every corporation that shall hereafter be created, although they may not be specified in its charter, or in the act or certificate under which it shall be incorporated. In addition to the powers enumerated in the first section of this act, and to those expressly given in its charter, no corporation shall possess or exercise any corporate powers except such as shall be necessary to the exercise of the powers so enumerated and given.

See ch. 70, §§ 1, 2. See §§ 5-7, post.

[A corporation cannot, in general, make any contract which is not necessary, directly or incidentally, for the objects of its corporation; but it may make any contract, either as principal or surety, proper to the ordinary means of carrying on its business. *Derringer's Admr. v. Derringer's Admr.*, 5 Houst. 416 (428).]

§ 3. No corporation created under this act shall, by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidences of debt, or receiving deposits, of buying gold or silver bullion, or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt upon loan for circulation as money.

§ 4. When the whole capital stock of a corporation shall not have been paid in, and

the capital paid shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the company or its certificate of incorporation, or such proportion of that sum as shall be required to satisfy the debts of the company.

Stock may be attached and sold. Ch. 70, §§ 13-17. Dividends. § 7, post.

[An action of indebitatus assumpsit will lie at the suit of a subscriber to the capital stock of a corporation, when. *Taylor v. Jackson*, 5 Houst. 224 (230 et seq.).]

§ 5. Any company created under this act for the drainage of low lands shall, in addition to other powers conferred by this act, have power, for the purpose of the reclamation of low lands by ditching, draining and bringing them into cultivation, to enter upon any lands that, in the opinion of the directors or managers, will be benefited by the operations to be performed by the company, and with their workmen, laborers, teams, etc., to cut and make, and when made, from time to time, to clear out and scour all such ditches or drains as in the opinion of such directors or managers shall be necessary for effectually draining and reclaiming the said lands. Before taking any steps, however, to accomplish the ends of its incorporation, the said company shall apply to the superior court for the appointment of commissioners to go upon the land through, along or across which the ditches of the said company are proposed to be cut, and view the same and determine whether any or which of them will be benefited by the same, and to make a return of their proceedings in the premises to the recorder, with a survey of the proposed ditches, showing their course, and the lands, by general designation through, along or across which they will run and to be benefited thereby, and the probable cost of making the improvements. They shall also return a valuation of the several parcels of land to be benefited by such improvements. Should there be upon the lines of the company's works any lands through, along or across which the ditches are to be made that will be injured by the making of them, they shall estimate such damage in money, and the same shall be paid to the owner, or, in case of his refusal to receive it, or absence from the State, or inability by reason of legal disability, it shall be deposited to his credit in the Farmers' Bank, or that branch thereof at the county seat, before the company shall have any right to construct or make their works through such land. The return of the commissioners shall be final and conclusive upon all parties, and shall be the basis upon which the taxes of the company are to be laid. It shall continue until a majority of the taxables demand a new

one, proceedings for which shall be taken in the said court by petition, and the prayer of the petition granted if in the opinion of the court such new valuation is proper to be made at the time. Before any commissions appointed under this section proceed to act they shall be sworn or affirmed, before a justice of the peace, to perform the duties of their appointment with fidelity, which qualification must be certified upon their return. When record is made of the return, the original shall be delivered over to the company, and it, or the records, or any office copy of the latter, shall be evidence. The commissioners shall be each paid by the company two dollars for each day employed by them under this act, and the surveyor for his survey and plot (including fee of one dollar and fifty cents each per day to the chain-carriers) such sum as the commissioners may deem just; and this money shall be paid before the commissioners shall be required to make any return. The recorder's fee shall also be paid to him at the time of the delivery over by him of the said return. Whatever money the company may find it necessary to raise for cutting the ditches (including the expenses in this section provided for) and for keeping the same open and in repair, shall, from time to time, as the exigency may require, be collected by taxation of the owners, according to the nature of their property to be benefited; to provide for which the managers shall make an estimate of the money to be raised and apportion it among the said owners; and they shall at once give notice, under their hands, of a meeting of said owners, to be held at some convenient place, to consider the said apportionment. At said meeting any owner shall have the right to be present and object to the justice of the same in his case. The managers shall, at the close of the meeting (which shall be kept open three hours), reconsider their apportionment and alter the same if they deem it expedient so to do. Such reconsideration shall be final, and then they shall make a copy of the apportionment under their hands, and deliver the same to the treasurer; and when the company orders money to be collected for its necessary purposes, the treasurer shall, upon receiving their warrant in writing, proceed to collect the same from the respective owners, according to such apportionment, and for that purpose shall have all the powers of a collector of county taxes. The apportionment shall have duration for the same time as the valuation by the commissioners, and taxes may, from time to time, be collected according to it, as the needs of the company may require. Orders for collection however only to be valid when made by the company at an annual meeting. In case of private owners of a ditch or ditches not within the company's limits, but the waters collected in which can be discharged into the ditches of the company, such private

owners may be allowed to connect with the works of the company on such terms as the latter may prescribe, and may thenceforth become constituent members of said company, with the rights of such members, and subject as to themselves and their lands drained by such private ditch or ditches, to all the burdens and responsibilities of other members or owners; and the members shall, at once, add their lands to the other lands within the company's operations, and apportion their shares of the taxes among them as above provided with respect to original owners. The managers shall take account of all changes of ownership of lands within the company's limits from whatever cause, and substitute the names of the new owners in lieu of the old ones upon their original apportionment, from which they shall be transferred to the copy in the hands of the treasurer, and when transferred the new owners shall stand in the place of the old, in all respects as if they had been original owners. Such companies as are provided for in this section shall set forth the name of the hundred or hundreds in which their operations are to extend in the certificate of their incorporation.

§ 6. Any building or building and loan association created under this act shall, in addition to the other powers herein granted, have power to sell its accumulated funds to and among its stockholders at any premium which may be obtained for the same, and when such funds cannot be loaned to any stockholder at par they may be loaned to any person not a stockholder at any rate of interest not exceeding six per cent.

See Act of April 11, 1893, at p. 20.

§ 7. It shall not be lawful for the directors of any bank or moneyed or manufacturing corporation in this State, or any corporation created under this act, to make dividends, except from the surplus or net profits arising from the business of the corporation, nor to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the said corporation, or to reduce the said capital stock, except according to this act, without the consent of the legislature; and, in case of any violation of the provisions of this section, the directors, under whose administration the same may happen, shall, in their individual capacities, jointly and severally, be liable at any time within the period of six years after paying any such dividends to the said corporation, and to the creditors thereof in the event of its dissolution or insolvency, to the full amount of the dividend made or capital stock so divided, withdrawn, paid out or reduced, with legal interest on the same from the time such liability accrued; Provided, That any of the said directors who may have been absent when the same was done, or who may have dissented from the act or

Corporate powers; certificate of incorporation — *Id.*, §§ 8–11.

resolution by which the same was done, may respectively exonerate themselves from such liability by causing their dissent to be entered at large on the minutes of the said directors at the time the same is done, or forthwith after they shall have notice of the same, and by causing a true copy of the dissent so entered on the minutes to be published within two weeks after the same shall have been entered on said minutes, in some public newspaper published in the county where the said corporation has its principal office or place of business, and if none be published in said county, then in a newspaper printed in an adjoining county and circulating in the neighborhood of such office or place of business of said corporation; And Provided, also, That this section shall not be construed to prevent a division and distribution of the capital stock of the corporation which shall remain after the payment of all its debts upon the dissolution of the corporation or the expiration of its charter.

§ 8. If any act shall hereafter be passed by the legislature of this State which shall create any corporation, such corporation shall immediately be vested with and possessed of all powers in this act specified and set forth, subject to all provisions therein contained, unless such special act incorporating the same shall otherwise, in whole or in part, direct to the contrary.

See Const., art. II, § 17, note.

[A mere act of incorporation cannot of itself create an existing corporation; it must afterward be organized and established, in order to give it any life as a corporation. *R. R. Co. v. R. R. Co.*, 5 Houst. 127 (132, 133).

An express acceptance of an act of incorporation is not essential to the corporate existence unless required by the act itself. An acceptance or concurrence must exist, but it will be implied from the fact of seeking corporate existence and the exercise of corporate powers. *Logan v. McAllister*, 2 Del. Ch. 176 (186).]

§ 9. Any corporation organized under any general law of the legislature, now or hereafter to be passed, shall, in addition to the powers and restrictions thereon to which it may become subject, or of which it shall be possessed by virtue of its organization and the act authorizing the same, be additionally possessed of all the powers, and be subject to all restrictions thereon in this act contained, so far as the same are consistent with the act under which it may as aforesaid be organized.

§ 10. It shall be lawful for three or more persons to become incorporated under the provisions of this act for purpose of carrying on any manufacturing business, for the business of preserving animal and vegetable food, for draining low lands, for building and loan associations, (for homestead companies to be operated under the Caldwell

system, or for religious, charitable and literary purposes.

See Const., art. II, § 17; and ch. 70, § 4. Mode of incorporating. §§ 11 et seq., of this chapter.

§ 11. The certificate of incorporation shall set forth:

I. The corporate name;

II. The object of the incorporation and the location of the principal place of business, if it be for business purposes;

III. The amount of capital stock, the number and par value of shares, and the amount to be paid in before commencing business, which shall not be less than ten per cent. of the whole capital. This shall not apply to religious, charitable and literary corporations, unless it be desired to have a capital stock. In case of such corporations the election not to have a capital stock shall be stated in lieu of the amount thereof, and the conditions of membership shall also be stated;

IV. The name and residence of the original subscribers to the capital stock, or, if there be no stock, of the original corporators;

V. The periods at which the corporation shall commence and terminate, not exceeding twenty years;

VI. The value of real and personal estate of which the corporation may become seized and possessed.

The certificate may also contain any limitation upon the powers of the corporation, the directors, and the stockholders, which may be desired by the parties signing the same; Provided such limitation does not attempt to exempt the corporation, the directors, or the stockholders from the performance of any duty imposed by this act or any law of this State.

The certificate shall be signed by the original corporators, or a majority of them, and shall be acknowledged, before any officer authorized by the laws of this State to take acknowledgments of deeds, to be the act and deed of the signers, respectively, and that the facts therein stated are truly set forth.

Amendments and alterations of the original certificate may be made by a supplemental certificate, presented, approved, filed and recorded in the same manner in every respect as is provided in reference to the original certificate.

Powers. Ch. 70, § 1; ch. 117, § 1.

[An amendment or supplement to the charter of a company is not an act of incorporation, and hence does not require the concurrence of both branches of the legislature, unless the act confers additional rights and franchises of a corporate nature, or confirms rights already existing in the company. *Bailey v. R. R. Co.*, 4 Harr. 389.

It is well settled that the legislature can bind the State by a provision in the charter of a corporation, not to tax for a given time the fran-

chises or property of such corporation, further than is agreed in the charter. *State v. Bank*, 2 *Houst.* 99 (116 et seq.). But such a provision will not be implied, but must be clearly expressed. *Id.*]

§ 12. The said certificate shall be presented to the associate judge of the county in which the principal place of business of the proposed corporation is located. Notice of the intention to apply for incorporation shall be published daily (if there be a daily paper published in the county) in two newspapers of the county for at least ten days immediately prior to the application. If there be no daily paper in the county, then for three successive issues. Satisfactory proof of the publication shall be made to the judge, who may, in any case, require any further publication which he may deem necessary. It shall be the duty of the judge to peruse and examine the said certificate, and if, after such perusal and examination, it still appear to the said judge that the purposes of the proposed incorporation are lawful and involve nothing detrimental to the public interest and welfare, that the certificate is in proper form, that the proposed amount of the capital stock and value of real and personal estate which the corporation may acquire are proper with respect to the purpose of the incorporation, and that a majority of the incorporators named in the certificate are then bona fide residents of this State, it shall be his duty to indorse thereon his approval and to transmit the said certificate so indorsed to the secretary of State to be filed in his office, and a copy of the same, furnished and certified by the said secretary, under his hand and the seal of his office, shall be recorded in the recorder's office of the county in which the application aforesaid is made.

§ 13. The original copy of said certificate furnished by the secretary of State, when the same has been certified by the recorder to have been recorded, or the record thereof, or a duly certified copy of such record, shall be evidence in any court of law or equity.

§ 14. Upon the making of the said certificate, and its approval, filing and recording as aforesaid, the persons therein named as original subscribers or incorporators, their successors and assigns, shall be, from the time of commencement mentioned in said certificate and until the time limited therein for the termination thereof, a body corporate and politic in law and in fact, by the name mentioned in said certificate: Provided, That the legislature may at pleasure dissolve any corporation created by virtue of this act, or alter and amend its charter.

Corporations created by legislative enactment. §§ 8, 9. Legislative power. See *Const.*, art. II, § 17.

§ 15. All companies that may be hereafter established within this State, under the provisions hereinbefore contained, or under any

law of this State, and also the officers of every such company, and the stockholders therein, may exercise the powers and shall be governed by the provisions and be subject to the liabilities hereinbefore and hereinafter provided.

§ 16. Any company organized as aforesaid may carry on a part of its business out of this State, and have one or more offices or places of business out of this State, and may hold, purchase and convey real and personal estate out of this State as if the same were within this State; Provided, That the certificate of the organization of such company shall state as near as conveniently can be, at the time of making said certificate, what portion of its business is to be carried on out of this State, and in what place or places it is to be so carried on; and shall also state the name of the town or city and county in which the principal part of the business of said company within this State is to be transacted, and such town, place and county within this State shall be deemed the principal place of business of said corporation within this State within the provisions of this act.

§ 17. The business of every corporation created under this act shall be managed and conducted by the directors thereof, who shall, respectively, be shareholders therein, and such other officers, agents and factors as the company shall think proper to authorize for that purpose; and every such company shall have a secretary and treasurer, who may or may not be the same person.

The directors shall not be less than three in number, and they shall be chosen annually by the stockholders, at such time and place as shall be provided by the by-laws, and shall hold their offices for one year, and until others are chosen and qualified in their stead; and one of the directors shall be chosen president, either by the directors or stockholders, as shall be directed by the by-laws.

The secretary and treasurer shall also be chosen annually, either by the directors or the stockholders, as the by-laws may direct, and shall hold their offices until others are chosen and qualified in their stead; the secretary shall record all proceedings of the corporation and directors, in a book to be kept for that purpose, and perform such other duties as shall be assigned to him.

The directors shall have power to choose such other officers and agents as may be deemed necessary, and may secure the fidelity of any or all of the officers of the corporation by bond or otherwise; and they may also provide by the by-laws for the qualification of any or all of the officers before any person authorized by law to administer an oath.

A failure to elect annually shall not dissolve a corporation.

Any vacancy among the directors or officers, occurring by death, resignation, re-

## Meetings of stockholders; assessments — Id., §§ 18, 19.

removal, or otherwise, may be filled for the remainder of the year in such manner as shall be provided for by the by-laws of the company.

Liability of officers. §§ 20, 31. Elections, how conducted. §§ 23, 25, 26.

[Where there is simply a direction in the charter for the annual election of an officer, his original term continues, though after the year, until a successor is duly elected and qualified. *Sparks v. Bank*, 3 Del. Ch. 274 (296).]

A corporate officer may bring a suit in his own name as officer on a contract made with him as such officer. *Norton v. Janvier*, 5 Harr. 346. The fact that a person acts as a corporate officer is sufficient evidence that he bears that character, at least in reference to the contract of third persons with him in that character. *Id.* Notice to, or knowledge of, the authorized officer or agent of a corporation, binds the principal. *Bank v. Tweed*, 4 Houst. 225 (232).]

§ 18. At all meetings of the company absent stockholders may vote by proxy, authorized in writing; and every company may determine by its by-laws the manner of calling and conducting all meetings, what number of shares shall entitle the stockholders to one or more votes, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be necessarily represented at any meeting in order to constitute a quorum; and if the quorum shall not be so determined by the company, a majority of the stockholders in interest, represented either in person or by proxy, shall constitute a quorum. In the absence of any other provision by the by-laws each share of stock shall be entitled to one vote.

The first meeting of every such company shall be called by a notice, signed by a majority of the persons named in the before-mentioned certificate, and designating the time, place and purposes of the meeting; and such notice shall, at least two weeks before the time of any such meeting, be published in some newspaper of the county where the corporation may be established, or, if there be none, then in one of an adjoining county; or said first meeting may be called without such notice or publication if two days' notice be personally served on all parties named in the certificate, or if all the parties named in the certificate waive such notice and fix a time of meeting, then no notice or publication whatever shall be required of such first meeting.

Every such company may, at any meeting called for that purpose, increase its capital stock and the number of shares therein until it shall reach the amount named in the original certificate, and every stockholder shall have a certificate, under the seal of the company and signed by the treasurer, of the number of shares owned by said stockholder in said company. The shares of stock in every corporation in this State shall be deemed personal property, and shall be

transferrable on the books of the corporation in such manner as the by-laws may provide; and whenever any transfer of shares shall be made for collateral security, and not absolutely, the same shall be so expressed in the entry of said transfer.

In case more capital stock is necessary, an additional certificate may be filed under the hands and seals of two-thirds in interest of the stockholders, or their legal representatives, stating the amount of such additional capital required, which shall be acknowledged, and if approved by the judge shall be filed and recorded in a manner heretofore provided for in this act with respect to the original certificate; Provided, That for all stock issued under such supplemental certificates, such company, its directors and stockholders, shall be entitled to all the benefits and subject to all the liabilities contained in this act.

[A purchaser of stock need only look to the title of his vendor as shown on the books of the company, and is not affected by previous irregularity in the transfers. *Turnpike Co. v. Bush*, 1 Harr. 44. But it seems that a purchaser of stock from a person to whom the stock was not regularly transferred on the books of the company, is bound to look into the title of his vendor. *Id.*]

Stock in corporations with all the rights thereto belonging, is liable to execution, and hence transfers of such stock may be void for fraud as against creditors. *Colbert v. Sutton*, 5 Del. Ch. 294 (300). Subscriber to stock is bound by the action of a majority of the corporation; and if the legislature amends the charter, he will not thereby be discharged from his liability, made previous to the change, unless such change would increase the amount which he was originally bound to pay. *R. R. Co. v. Tharp*, 1 Houst. 149 (174 et seq.).

A by-law made by directors that no stockholder should have the right to transfer his stock while he was a debtor to the corporation is valid and gives the corporation a lien on the stock for the debts of the holder. *McDowell v. Bank*, 1 Harr. 27 (31, 32).]

§ 19. The directors of every corporation created under this act may, from time to time, assess upon each share of stock such sum of money as two-thirds of the stockholders in interest shall direct, not exceeding in the whole the amount at which each share shall be originally limited under the third article of the eleventh section of this act; and such sums so assessed shall be paid to the treasurer at such times and by such installments as the directors shall direct, the said directors having given thirty days' notice of the time and place of such payments in a newspaper of the county where such a company is established, and if there be none, then in a newspaper circulating in the county.

In default of the payment of such assessments, they may be collected by suit, or, after thirty days from the time appointed for the payment thereof, the treasurer of the company may sell at public auction such number of the shares of such delinquent owner or owners as will pay all assessments

then due from him or them, with interest, and all necessary incidental charges; Provided, two-thirds of the stockholders in interest shall so direct. Notice of the time and place of such sales and of the sum due on each share shall be given by advertisements for three weeks successively before the sale, in a newspaper of the county, or, if there be none, in a newspaper circulating in the county where such company is established; and further notice shall be mailed to such delinquent stockholder, if his post-office address is known. The shares so sold shall be transferred to the purchaser, who shall be entitled to a certificate therefor.

Personal liability of stockholders. § 4, ante. What constitutes payment of stock. § 29, post.

§ 20. The president and directors, with the secretary and treasurer of such company, after the payment of the last installment of the capital stock so fixed and limited by the company, shall make a certificate, stating the amount of capital so fixed and paid in in cash, which certificate shall be signed and sworn, or affirmed to, by the president, secretary and treasurer, and a majority of the directors, who shall, within thirty days after making the same, cause it to be recorded in the office of the recorder of deeds of the county wherein the business is conducted, or where their principal place of business is located.

If any such corporation shall increase its capital stock, as before provided in this act, a similar certificate shall be made, signed, sworn or affirmed to, and recorded after the payment of the last installment of such additional stock. If any of the said officers shall neglect or refuse to perform the duties required of them in this section for thirty days after written request so to do by a creditor or stockholder of said company, they shall be jointly and severally liable for all debts of the company contracted before such certificate shall be recorded as aforesaid.

[Specific performance of contract for sale of stock, denied. *Iron Co. v. Todd*, 6 Del. Ch. 163; s. c., 14 Atl. Rep. 27.]

§ 21. Whenever, in the judgment of the board of directors of any corporation organized under this act, or incorporated under any law of this State, it shall be deemed advisable and most for the benefit of such corporation that the same shall be dissolved before the expiration of the time limited in its certificate of incorporation or in its charter, it shall and may be lawful for such board of directors, within ten days after the adoption of a resolution to that effect, by a majority of the whole board, at any meeting called for that purpose, and of which meeting every director shall have received at least three days' notice, to cause written or printed notices of the adoption of such reso-

lutions to be mailed to each and every stockholder of such company residing in the United States, and also within said ten days to cause a like notice to be published in one or more newspapers of the county wherein said corporation shall have its principal place of business, or, if there be none, in a newspaper circulating in said county, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of such stockholders, to be held at the office of such company, in such county, to take action upon such resolutions so adopted by the board of directors, and which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may, on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned, from time to time, for not less than eight days at any one time, of which adjourned meeting notice, by advertisement, in such paper, shall be given; and if, at any such meeting, two-thirds in interest of all the stockholders shall consent that such dissolution shall take place and signify such their consent in writing, then, and in such case, such companies shall, upon filing such consent, duly attested by their secretary signing the same together with a list of the names and residences of the then existing directors and officers, which list shall be duly verified by the secretary or president of said board in the office of the secretary of State, and receiving from him a certificate that such consent has been filed, be dissolved; and the board of directors of that company shall cause such certificate to be published four weeks successively, at least once a week, in one or more newspapers circulating in the county in which such company has been located and conducting its business; at the expiration of such time the said board shall proceed to settle up and adjust the business and affairs of such company in the same manner as though the same had been dissolved by the expiration of the time mentioned in their charter or certificate of incorporation; Provided, That the secretary of State shall not issue the certificate of dissolution hereinbefore mentioned until satisfied by due proof that the requirements aforesaid have been fully complied with by such corporation.

The provisions contained in this act may be amended or repealed at the pleasure of the legislature, and every company created by this act shall be bound by such amendment; but such amendment or repeal shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred.

See §§ 32-37, post.

§ 22. After the first election of directors no stock shall be voted on at any election which shall have been transferred on the books of

the company within twenty days next preceding such election; and it shall be the duty of the officer who shall have charge of the transfer books to prepare and make, at least ten days before every election, a complete list of the stockholders entitled to vote, arranged in alphabetical order. Such list shall be open to the examination of any stockholder, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present. Upon the neglect or refusal of said directors to produce such list at any election they shall be ineligible to any office at such election.

The stock ledgers, or, if there be none, then the transfer books of the company, shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the company, or to vote, in person or by proxy, at any election.

[Corporation books are evidence in a suit between the company and a corporator. *Jefferson v. Stewart*, 4 Harr. 82.]

§ 23. All elections for managers or directors of every incorporated company of this State shall be held by ballot (unless otherwise expressly provided in their respective charters), and every such election shall be held upon the day for the annual election specified in the certificate of incorporation, and between such hours as may be provided in the by-laws.

Every person holding stock in any company as executor, administrator, guardian, or trustee, shall represent the share or stock in his hands at all meetings of the company, and may vote accordingly as a stockholder in person or by proxy.

If any incorporated company in this State shall purchase any of the stock of such company, or take the same in payment or satisfaction of any debt due to them, such stock shall not be voted, either directly or indirectly, at any election for directors of said company.

No person who is a candidate for the office of director in any incorporated company in this State shall act as judge, inspector, or clerk, or in any other character as the conductor of any election for directors for such company, unless there be an insufficient number of other stockholders present, and any violation of this provision shall make void the election of any such person as a director, and he shall be ineligible to the office of director of such company for twelve months next succeeding such election; Provided, That this election shall not apply to the first election of directors in any corporation.

New election. § 25, post.

§ 24. It shall be the duty of the superior court, upon the application of any person or

persons or a body corporate, who may be aggrieved by or may complain of any election, or any proceedings, act, or matter in or touching the same, reasonable notice having been given to the adverse party or to those who are to be affected thereby as (a) such intended application, to proceed forthwith, and in a summary manner, to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon to establish the election so complained of, or to order a new election, or make such order, and give such relief in the premises as right and justice may appear to the said superior court to require; Provided, That the said superior court may, if the case shall appear to require it, either order an issue or issues to be made up in such manner and form as the said court may direct, in order to try the respective rights of the parties who may claim the same to the office or offices, or franchise, in question, or may give leave to exhibit, or direct the attorney-general to exhibit, one or more information or informations in the nature of a quo warranto in the premises.

§ 25. If at any time hereafter the election for directors of any bank or other incorporated company of this State shall not be duly held on the day designated and appointed by the act incorporating such bank or other incorporated company, or the certificate of incorporation, or by the by-laws of any such corporation, it shall be the duty of the president and directors of such bank, or other incorporated company, to notify and cause an election for directors to be held thereafter as soon as conveniently may be; and in all cases no share or shares shall be voted upon except by such person or persons as may have appeared on the stock ledger or transfer book of said company to have had the right to vote thereon on the day when, by the act of incorporation of such company, or by said by-laws, the said election ought to have been held.

The associate judge of the superior court resident in the county where the proper place of business of any corporation is located, may summarily order such election to be held upon the application of any stockholder, and may punish the directors as for a contempt of court for any neglect or failure to obey the order of such judge in reference to such election.

§ 26. No by-laws of the directors or managers of any incorporated company, regulating the election of directors or officers of such company, shall be valid unless the same shall have been made thirty days previous to any election of such company and subject to the inspection of any stockholder; and in all cases where the right of voting upon any share or shares of stock of any incorporated company of this State shall be questioned, it shall be the duty of the inspectors of the election to require the transfer book and

stock ledger of said company, if both be kept, otherwise whichever is kept, as evidence of stock held in the said company, and all such shares as may appear standing thereon in the name of any person or persons shall and may be voted on by such person or persons, directly by themselves or by proxy, subject to the provisions of the act of incorporation.

§ 27. In all cases where it is not otherwise provided by law, the meeting of the stockholders of all corporations of this State shall be held at the principal office or place of business of the company in this State; the directors may hold their meetings, and have an office, and keep the books of the company (except the stock and transfer books), outside of this State if the by-laws of the company so provide; Provided, however, That said company shall always maintain a principal office or place of business in this State, and have an agent of the company in charge thereof, wherein shall be kept the stock and transfer books of the company for the inspection of all who are authorized to see the same, and for the transfer of the stock; And provided further, That the chancellor, or the superior court, or any judge thereof, may, upon proper cause shown, summarily order any or all of the books of said company to be forthwith brought within this State and kept therein at such place as may be designated, for such time as such chancellor, court, or judge may deem proper; and upon failure of any company to comply with such order its charter may be declared forfeited by the chancellor or said court, and it shall therefrom cease to be a corporation, and all the directors and officers of said company shall be liable to be punished as for contempt of court for disobedience.

See ch. 70, § 3.

§ 28. Whenever, for want of sufficient by-laws or officers duly authorized, or from other legal impediment, a legal meeting of any kind of the stockholders of any corporation cannot be otherwise called, three or more stockholders thereof may call a meeting of the company by giving ten days' notice in a newspaper circulating in the county wherein the business is conducted, or where their principal place of business or office in this State is located; and such meeting so called shall be a legal meeting of the company; and if there be no officers of the company present whose duty it is to preside at meetings, the stockholders present may elect officers for the meeting; and it shall be the duty of the secretary of the company to record the proceedings of such meeting in the book of minutes of the company.

See ch. 70, § 3.

§ 29. Nothing but money shall be considered as payment of any part of the capital stock of any company organized under this act, except as hereinafter provided for the purchase of property; and no loan of money shall be made to a stockholder or officer therein; and if any such loan shall be made to a stockholder or officer of the company, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the company contracted before the repayment of the sum so loaned.

Assessments on stock. § 19.

§ 30. The directors of any company incorporated under this act may purchase mines, manufactories, or other property necessary for their business, and issue stock to amount of the value thereof in payment therefor; and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payments under any of the provisions of this act.

See § 17.

§ 31. If any certificate made, or any public notice given by the officers of any company in pursuance of the provisions of this act shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they were stockholders or officers thereof.

Liability of officers. § 20.

§ 32. Upon the dissolution in any manner of any corporation already created, or which may hereafter be created by or under any law of this State, the president and directors, or the managers of the affairs of the said corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution, as far as such moneys and property shall enable them.

See § 1 (VII) and § 21 of this act.

§ 33. The persons constituted trustees as aforesaid shall have authority to sue for and recover the aforesaid debts and property by the name of the trustees of such corporation, describing it by its corporate name, and shall (be) suable by the same name, or in their own names or individual capacities, for



the debts owing by such corporation at the time of its dissolution, and shall be jointly and severally responsible for such debts to the amount of the moneys and property of such corporation at the time of its dissolution, and which shall come to their hands or possession.

§ 34. All such corporations, whether they expire by their own limitation or shall be annulled by the legislature, or otherwise dissolved, shall nevertheless be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which such corporation may be established.

§ 35. When any corporation shall be dissolved in any manner whatever, the chancellor, on application of any creditor or stockholder of such corporation, at any time, may either continue such directors trustees as aforesaid, or appoint one or more persons to be receivers of and for such corporation, to take charge of the estates and effects thereof, and to collect the debts and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purpose aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation if in being that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the chancellor shall think necessary for the purpose aforesaid.

§ 36. The chancellor shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders, injunctions and decrees therein as justice and equity shall require.

§ 37. The said trustees or receivers shall pay all debts due from the corporation if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of such debts and necessary expenses, they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation, or their legal representatives.

§ 38. In case of the insolvency of any corporation, the laborers in the employ thereof shall have a lien upon the assets thereof for the amount of the wages due to them, not exceeding one month's wages respectively, which shall be paid prior to any other debt or debts of said company;

and the word "laborers" shall be construed to include all persons doing labor or service of whatever character for, or as workmen or employees in the regular employ of such corporations.

§ 39. On the final dissolution of any corporation created under this act, all its real and personal estate, not legally disposed of, shall be vested in the individuals who may be stockholders at the time of such dissolution, in their respective proportions, and they shall hold the same as tenants or owners in common.

§ 40. In any action now pending or to be commenced in any court of record of this State against any corporation now or heretofore existing, or that may be created hereafter, if said corporation becomes dissolved by the expiration of its charter or otherwise before final judgment obtained therein, the said action shall not abate by reason thereof, but the dissolution of said corporation being suggested and the names of the trustees of said corporation being entered upon the record, the said action shall proceed to final judgment against the said trustees by the name of the corporation.

Power to sue and be sued. Ch. 70, §§ 2, 6; ch. 147, § 1 (2).

§ 41. When any of the officers or directors of any company, or stockholders thereof, shall be liable by the provisions of this act to pay the debts of such company, to any part thereof, any person to whom they shall be so liable may have an action on the case against any one or more of the said officers, directors or stockholders; and the declaration in such action shall state the claim against the company and the ground on which the plaintiff expects to charge the defendants personally.

§ 42. Any officer, director or stockholder of a company who shall pay any debt of the company for which he is made liable by the provisions of this act, may recover the amount so paid in an action against the company, for money paid for their use, in which action the property of the company only shall be liable to be taken.

§ 43. Any corporation now existing under any law of this State, either general or special, may come under and be subject to the provisions and liabilities of this act in the same manner as if created under the same, if such company make a certificate under the hands of the president and directors of the company that said company desires to come under the said provisions and liabilities, which certificate shall be acknowledged, recorded and filed in the same manner as the certificate required by this act; Provided, That nothing in this section contained shall be held to affect any transaction, liabilities or debts of any such company heretofore done, accrued or contracted.

§ 44. It shall be lawful for any corporation heretofore or hereafter created under or by virtue of this act, or by any law of this State, at any time before the expiration of its charter, or the period named in its certificate of organization, to file in the office of the secretary of state a certificate under its common seal, attested by the signature of its presiding officer, declaring its desire that the period of its existence as such corporation shall be extended for any time therein mentioned, not exceeding twenty years. A duly authenticated copy of said certificate shall thereupon be recorded in like manner as the original certificate under this act, and upon the making and filing and recording of said certificate the period of existence of such corporation shall be extended as declared in such certificate as fully as if the said period had been named in the original charter or certificate of organization of such corporation. And nothing herein contained shall be construed to interfere with the right of the State to abolish or repeal, alter or amend the charter of any such corporation, nor shall this act be construed to contain any irrevocable or other contract with the State contained in any charter beyond the time originally fixed for its expiration.

§ 45. The provisions of this act relating to stockholders shall include members whenever applicable.

§ 46. That the secretary of state is hereby authorized and directed to demand, for the use of the State, on certifying any charter of incorporation or renewal thereof, authorized by this act, the sum of twenty dollars when the capital stock of such corporation shall exceed fifty thousand dollars, and ten dollars when the capital stock shall not exceed fifty thousand dollars; Provided, That in the case of corporations for religious, charitable, or literary purposes, the said tax shall not be charged or collected. The fees of the secretary of state and of the recorder shall be as heretofore.

(Passed at Dover, March 14, 1883.)

#### Chapter 702, Vol. 19.

A supplement to the act entitled "An Act concerning private corporations," passed at Dover, March 14, 1883.

Section 1. That the certificate of incorporation of building, or building and loan associations to be created under the act entitled "An Act concerning private corporations," passed at Dover, March 14, 1883, shall not be required to state an amount of the capital stock to be paid in before commencing business, and no percentage of said stock shall be required to be paid in before the association shall be organized and commence business.

§ 2. That whenever any one of the corporations named in the certificate of incorporation, to be filed under the act of which

this is a supplement, or any incorporator named in any act of incorporation heretofore or hereafter passed in this State, or any commissioner appointed in any such act of incorporation to take subscriptions for capital stock, shall have died before the organization of such corporation, then, and in such case, the powers vested in such incorporators or commissioners shall thereafter be vested in the survivor or survivors of such corporation or commissioner.

(Passed at Dover, April 11, 1893.)

#### Chapter 703, Vol. 19.

AN ACT in relation to foreign corporations doing business in this State.

Section 1. (As amended April 19, 1895.) That it shall not be lawful for any corporation created by the laws of any other State, or the laws of the United States, to do any business in this State through or by branch offices, agents or representatives located in this State, until it shall have filed in the office of the secretary of state of this State a certified copy of its charter and the name or names of its authorized agent or agents in this State, together with a sworn statement of the assets and liabilities of such company or corporation, and paid the secretary of state, for the use of the State, fifty dollars (\$50); and the certificate of the secretary of state under his seal of office, of the filing of such charter, shall be delivered to such agent or agents upon the payment to said secretary of state of the usual fees for making certified copies, shall be prima facie evidence of such company's right to do business in this State.

"Provided, however, That no such corporation as aforesaid shall, within the limits of this State, by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidence of debt, of receiving deposits, of buying gold or silver bullion or foreign coin, or of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt upon loan for circulation as money, anything in its charter or articles of incorporation to the contrary thereof notwithstanding.

"And provided further, That all certificates to be hereafter issued by the secretary of state under the provisions of this act shall expressly set forth the limitations and restrictions contained in the preceding proviso."

§ 2. That any person or persons, agent, officer, or employee of any foreign corporation who shall transact any business within this State for any such foreign corporation without the provisions of this act being first complied with shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding one thousand dollars, at the discretion of the court;

Peace and order; foreign insurance companies — Ch. 148, v. 17; ch. 179, v. 14.

Provided, however, That the provisions of this act shall not apply to fire insurance companies doing business in this State.

(Passed at Dover, April 28, 1893.)

[A foreign corporation, acting as an administrator, may, by its treasurer, make probate of a debt. *Derringer's Admr. v. Derringer's Admr.*, 6 Houst. 64 (79 et seq.)]

#### Chapter 148, Vol. 17.

AN ACT for the preservation of peace and good order.

Section 1. That corporations owning or using any railroad, steamboat, canal, rolling mill, shipyard, car factory, or manufacturing establishment of any kind, within this State, may, jointly or severally, from time to time, apply, by petition, to the governor to commission such person or persons as the said corporation or corporations may designate, to act as special constables for the protection of the property of said corporation or corporations, and for the preservation of peace and good order on their respective premises, railroad trains, or steamboats, and also for the protection of persons travelling thereon.

§ 2. The governor, upon such application, may, if he thinks it proper so to do, appoint such persons, or so many of them as he may deem proper, to be such special constables, and shall issue to every person so appointed a commission for the term of two years, unless sooner revoked; and the person thereby appointed shall, before entering upon the duties of his office, take and subscribe, before a justice of the peace, an oath or affirmation that he will perform his duties with fidelity, and cause his commission, with such affidavit endorsed thereon, to be duly recorded in the recorder's office of the county wherein he resides. Every such special constable so commissioned and qualified shall possess and exercise, within this State, all the authority and powers now conferred on policemen in the city of Wilmington.

§ 3. The governor may at any time revoke any such commission at his pleasure, and, upon the written application of the corporation or corporations upon whose petition such special constable shall have been appointed, shall revoke such commission; such revocation to be effected by an order in duplicate, signed by the governor, one whereof shall be mailed to the special constable and the other filed in the recorder's office where the commission is recorded and noted on the record of said commission.

§ 4. That the compensation of every such special constable shall be wholly paid by the corporation or corporations upon whose petition he was appointed, and neither the State nor any county thereof shall be responsible for any part of such compensation.

§ 5. This act shall be deemed and taken to be a public act, and published as such.

(Passed at Dover, February 27, 1893.)

See similar provisions in Maryland.

#### Chapter 181, Vol. 19.

AN ACT for the benefit of creditors and stockholders of insolvent corporations.

Section 1. That whenever a corporation shall be insolvent, the chancellor, on the application and for the benefit of any creditor or stockholder thereof, may, at any time, in his discretion, appoint one or more persons to be receivers of and for such corporation, to take charge of the estate, effects, business and affairs thereof, and to collect the outstanding debts, claims, and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by such corporation and may be necessary and proper; the powers of such receivers to be such and continued so long as the chancellor shall think necessary; Provided, however, That the provisions of this act shall not apply to corporations for public improvement.

(Passed at Dover, March 25, 1891.)

#### Chapter 179, Vol. 14.

AN ACT in relation to foreign insurance companies doing business in the State of Delaware.

Section 1. That whenever the existing or future laws of any other State of the United States, shall require of insurance companies incorporated by this State, and having agencies in such other State, or of the agents thereof, any deposit of securities in such State for the protection of policy holders, or otherwise, or any payment for taxes, penalties, certificates of authority, license fees, or otherwise, greater than the amounts required for such purposes from similar companies of other States by the then existing laws of this State, then, and in every such case, all companies of such States, establishing, or having heretofore established an agency or agencies in this State, shall be and are hereby required to make the same deposit, for a like purpose, with the treasurer of the State of Delaware, and to pay said treasurer for taxes, fines, penalties, certificates of authority, license fees, and otherwise, an amount equal to the amount of such charges and payments imposed by the laws of such State upon companies of this State and agents thereof.

§ 2. That all sums of money received by the treasurer of the State of Delaware under the provisions of this act, in payment

Surety companies: fire insurance — Ch. 694, v. 18; ch. 695, v. 18.

of taxes, penalties, certificates of authority, or license fees, from foreign insurance companies transacting business in this State, by agents or otherwise, shall be for the use of the State of Delaware.

§ 3. That all persons violating any of the provisions of this act shall be liable to indictment, on information of such violation being given to the attorney-general of this State, or to his deputies, and, on conviction, shall be fined not less than one hundred dollars, nor more than five hundred dollars, at the discretion of the jury and court trying the same.

(Passed at Dover, March 8, 1871.)

#### Chapter 694, Vol. 18.

AN ACT in relation to corporate suretyship and foreign surety companies.

Section 1. That any corporation duly chartered by any of the United States or foreign country, and authorized and empowered by its charter to transact the business of fidelity insurance and corporate suretyship within the State or country from which it derives its charter, and having a paid-up capital of at least one hundred and fifty thousand dollars, or a paid-up capital and other resources amounting altogether to at least one hundred and fifty thousand dollars, may be admitted to do such business in this State upon filing and keeping in the office of the insurance commissioner a power of attorney executed under the seal of such company, designating a resident of this State as its attorney, upon whom all process and papers in any suits brought in any court of this State against such company may be served, which said attorney may be thereby authorized and directed to cause the appearance of such company to be entered to any such suits.

§ 2. Every such company applying for admission to transact business in this State, shall file with the insurance commissioner a copy of its charter and its last annual statement showing its assets and liabilities; and annually thereafter, it shall file a like annual statement, and shall pay such fees to the insurance commissioner as are now, or may hereafter be provided by law with respect to insurance companies.

§ 3. Every such company complying with the provisions of this act is hereby fully invested with power to execute and deliver bonds insuring the fidelity of persons holding positions of responsibility and trust, public and private, of becoming sole surety in any case where, by law, a bond or bonds with one or more sureties may be required or permitted for any legal purpose whatsoever, including the case of surety upon contracts, public and private official bonds, and cases pending in any of the courts of this State, except bail bonds in criminal cases.

§ 4. Any public officer or department of State, county or municipal government, whose duty it may or shall hereafter be to approve the surety upon any bond or bonds, may in his or their discretion, accept and approve such bonds when executed by the principal therein, and any surety company duly authorized to do business in this State under the provisions of this act. The Levy Court of the several counties of this State may be, and they are authorized in their discretion to accept such bonds as security for collectors of county taxes in lieu of the security now provided for by the laws of this State.

§ 5. Any company admitted to do business in this State under the provisions of this act, shall pay such tax or taxes as may hereafter be imposed upon such companies; and it shall be the duty of any officer receiving such tax or taxes to issue to such company or its agent, upon the payment of such tax, receipts therefor in duplicate, and such company, or its agent, shall thereupon deliver to the insurance commissioner one of such duplicate receipts and the insurance commissioner shall not issue any certificate of authority to do business in this State to any company in arrears for any taxes due to this State.

(Passed at Dover, March 28, 1889.)

#### Chapter 695, Vol. 18.

AN ACT to define the liability of fire insurance companies in certain cases.

Section 1. Whenever any policy of insurance shall be issued to insure any real property in this State against loss by fire, tornado or lightning, and the property insured shall be wholly destroyed without criminal fault on the part of the insured, or his assigns, the amount of the insurance stated in such policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages, (subject to the proviso herein); and every such policy, whether hereafter issued or renewed, shall have endorsed across the face of it the following: "It is agreed between insurer and insured that the value of the insured property is of the sum of \$.....; and this estimate shall be binding on both parties as to value; [Provided, however, That nothing herein contained shall, in case of loss, prevent the company insuring from adjusting the loss by replacing the property destroyed.] " And in case any owner shall effect any subsequent insurance upon any larger value than so agreed, all insurance as well as that then existing as that subsequently obtained shall become void.

§ 2. This act shall apply to all policies of insurance hereafter made or issued upon real property in this State, and also to the renewal which shall hereafter be made, of

Express companies; attachment; practice — Ch. 700, v. 19; ch. 106, G. L.

all policies heretofore issued in this State, and the contracts made by such policies and renewals shall be construed to be contracts made under the laws of this State.

§ 3. The court upon rendering judgment against any insurance company upon any such policy of insurance, shall allow the plaintiff a reasonable sum as an attorney's fee to be taxed as part of the costs.

§ 4. \* \* \* \* \*

(Passed at Dover, March 29, 1889.)

#### Chapter 700, Vol. 19.

AN ACT in relation to express companies doing business in this State.

Section 1. That it shall be unlawful for any express company, firm, corporation, or individual, carrying on an express business in this State, or for any agent, officer or employe of such express company, firm, corporation, or individual, to charge or receive for the transportation, or for the transportation and delivery of any bundle or package containing anything of value, a greater compensation for such service than the same company, firm, corporation, or individual, charges and receives for like service in the States of Pennsylvania and Maryland. Any express company, firm, corporation or individual, or any agent, officer or employe of any such express company, firm, corporation or individual, violating the provisions of this act shall, upon conviction before any justice of the peace, be fined not less than twenty dollars nor more than one hundred dollars for each and every such offence.

(Passed at Dover, May 2, 1893.)

#### Chapter 435, Vol. 17.

AN ACT in relation to the duties of the State treasurer.

Section 1. That it shall be and is hereby made the duty of the State treasurer to make a written report to each house of the general assembly within ten days after the commencement of every regular or special session thereof, showing all unpaid taxes due the State from any corporation liable to pay such taxes, and in such report shall state in detail the amount of tax unpaid by any such corporation and the name of the corporation so in default.

§ 2. That whenever any corporation liable to pay taxes to the State shall make default of the same for the space of sixty days after demand for payment thereof by the State treasurer, it shall be and is hereby made the duty of the State treasurer to certify the facts to the attorney-general for such proceedings in the premises by him as may be warranted by the laws of this State.

(Passed at Dover, April 14, 1885.)

#### Chapter 182,\* Vol. 15.

A supplement to chapter 104 of the Revised Statutes of the State of Delaware.

Section 1. A writ of foreign attachment may be issued out of the superior court of this State against any corporation, aggregate or sole, not created by or existing under the laws of this State, upon affidavit made by the plaintiff or any other credible person, and filed with the prothonotary of said court, that the defendant is a corporation not created by, or existing under the laws of this State, and is justly indebted to the said plaintiff in a sum of money, to be specified in said affidavit, and which shall exceed fifty dollars.

§ 2. The said writ shall be framed, directed, executed and returned, and like proceedings had as in the case of a foreign attachment issued under the chapter to which this act is a supplement, except that attachments to be issued under this act shall be dissolved only in the manner hereinafter provided.

§ 3. In any attachments to be issued under this act, judgment shall be given for the plaintiff at the second term after the issuing of the writ, unless the defendant shall have caused an appearance by attorney to be entered, in which case the like proceedings shall be had, as in suits commenced against a corporation by summons; Provided, however, if the defendant in the attachment, or any sufficient person for him, shall, at any time before judgment, give security for the payment of any judgment that may be recovered in said proceedings with costs, then the garnishees and all the property attached, shall be discharged, and the attachment dissolved, and like proceedings be had as in other cases of foreign attachment under the act to which this is a supplement, in which the attachment has been dissolved by special bail. Such security shall be approved, and the form and amount thereof determined by the court in term time, or by any judge thereof, in vacation; but the court may prescribe the form of such security by general rule in that behalf.

(Passed at Dover, March 2, 1857; amended, March 17, 1875.)

#### Chapter CVI.

Of Pleading and Practice in Civil Actions.

§ 6. \* \* \* [In any action by or against any corporation, it shall not be necessary for the plaintiff or the trial to prove the incorporation and existence of such corporation, but the same shall be taken to be admitted as alleged on the record unless the defendant,

\*Note.—This chapter comprises chapter 424 of volume 11, as amended by chapter 181, volume 15, and is published in accordance with section 2 of said chapter.

or when there is more than one defendant, some one of the defendants shall have filed, at or before the time of filing the plea in such action, an affidavit denying the existence of the corporation as alleged. Such affidavit may be made by the president, secretary, treasurer, cashier or any director of any corporation defendant.]

See ch. 147, § 1 (2), and note.

#### AN ACT concerning the publication of the laws.

Section 1. That the secretary of state be and he is hereby directed to exclude from the publication of the laws of this State all acts of incorporation, and other acts of a private nature, unless such acts contain a provision directing their publication.

§ 2. Inoperative.

§ 3. (As amended May 8, 1895.) That the secretary of state is hereby authorized and directed to demand and receive for the use of the State, on certifying any act of incorporation, the sum of twenty dollars when the capital stock of such corporation shall not exceed fifty thousand dollars, and an additional sum of twenty cents for each and every thousand dollars above fifty thousand dollars, or when such corporation is given the power to increase its capital stock to an

amount exceeding fifty thousand dollars, twenty cents for each and every thousand dollars which it is given power to increase above fifty thousand dollars; and on certifying any other act or resolution of a private nature, he shall demand and receive for the use of the State a fee of ten dollars, except that in all divorce acts, and in all acts of a private character pertaining to the acknowledgment or recording of deeds or other papers, or to titles or conveyance of real estate, he shall demand and receive for the use of the State a fee of twenty dollars in each case. That all corporations created by act of the legislature of this State, except municipal corporations, shall pay to the secretary of State for the use of the State the cost of the publication of any such acts of incorporation which may be published in any edition of the laws of this State to be hereafter issued. This act shall not take effect until the first day of January, Anno Domini, eighteen hundred and ninety-six.

§ 4. That it shall not be lawful for the clerks of the two houses of the legislature, or either of them, hereafter to give or permit copies of such acts as are referred to in the foregoing sections to be taken, unless the certificate of the secretary of state is appended thereto.

(Passed at Dover, February 17, 1866.)

### LEGISLATIVE ACTS ENACTED SUBSEQUENTLY TO 1893.

- Act 1. To make valid the record of certain deeds.  
2. To equalize taxation.  
3. Supplement to preceding act.  
4. Relating to foreign corporations.

#### Act 1.

#### AN ACT to make valid the record of certain deeds.

Whereas, There are many conveyances of real estate within the State of Delaware executed and delivered bona fide by the corporations, grantors therein, under which the grantees in said conveyances, and those claiming under them, have entered into and continuously held quiet and uninterrupted possession of the premises so conveyed, which said deeds were not acknowledged and certified in accordance with the requirements of the laws of this State in force at the time of their execution, but have been, nevertheless, entered upon the records by the recorders of deeds in and for the several counties of this State; and

Whereas, By reason of such defect the record of said deeds cannot be offered in evidence; therefore,

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Section 1. That the record of any deed dated prior to the first day of January, A. D. one thousand eight hundred and ninety-

seven, executed by any corporation having authority to make the same, which was duly signed and sealed by the party therein named as grantor or grantors, notwithstanding it may not appear that the execution and acknowledgment of the said conveyance was duly authorized by resolution of the directors, trustees or other managers, or by the legally constituted attorney of such corporation, shall be and the same is hereby made valid and effectual in law, as if said deed had been correctly acknowledged and certified, and the said record or any office copy thereof shall be admitted as evidence in all of the courts of this State, and shall for all purposes be valid and conclusive as if said deed had been in all respects acknowledged, and the acknowledgment certified in accordance with the then existing laws.

(Passed at Dover, February 25, 1897.)

#### Act 2.

#### AN ACT to equalize taxation for State and county purposes.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

§ 4. The president and secretary of all corporations and associations liable to taxation under this act shall, on the first day of December in each year, make their re-

## Taxation — Laws, 1897.

spective returns under oath to the assessor of the hundred or assessment district in which the principal office or business place of the corporation or association is situated; which return shall show the whole number of shares in each of said corporation or association, the market value of each share and the aggregate market or real value of all the shares, with the name of the owner and the number of shares owned by each respectively.

§ 5. Any officer of any corporation or association failing to make return or report as herein required shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than ten nor more than five hundred dollars or be imprisoned not less than ten days nor more than six months.

§ 14. That all acts and parts of acts inconsistent with this act are hereby repealed.

(Passed at Dover, May 20, 1897.)

**Act 3.**

A supplement to an act, entitled "An Act to equalize taxation for State and county purposes," passed at Dover, May 20, 1897.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Section 1. That in any of the affidavits required by the act entitled "An act to equalize taxation for State and county purposes," passed at Dover, May 20, 1897, the president, secretary, treasurer or cashier of a corporation may make the same on behalf of said corporation, or any member of a firm or partnership on behalf of said firm or partnership.

(Passed at Dover, May 20, 1897.)

**Act 4.**

AN ACT in relation to foreign corporations.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Section 1. That no foreign corporation shall engage in, prosecute or transact any business of any kind within the limits of this State on or after the first day of June, A. D., 1897, without, in addition to what is now required by the laws of this State, first filing a certificate under its corporate seal and the hand of its president or head officer, attested by its secretary, in the office of the prothonotary of the superior court of the State of Delaware in each of the counties of this State, designating the name and residence of some person or agent within this State upon whom service of process may be made.

§ 2. That all process sued out of this State in any court of this State against such corporation, all orders made by any court of this State, all rules and notices of any kind required to be served on or given to any

such corporation may, after said first day of June, A. D., 1897, be served on or given to such person or agent so certified as aforesaid, and such service or notice shall be as effectual and shall operate as if it had been served on or given to said corporation.

§ 3. The prothonotary of the superior court of the State of Delaware in each county of this State shall procure and keep a book which is hereby named "Record of Agents of Foreign Corporations," and shall enter and record therein the name of every foreign corporation, designating by certificate any person or agent as aforesaid, the name of such person or agent, the name of the State in which said corporation is incorporated, and the date of the filing such certificate; and for making the above entries the prothonotary making the same shall receive from the corporation, whose certificate it is, a fee of one dollar.

§ 4. Any such foreign corporation, by filing a certificate of the same kind and nature, executed as aforesaid in the several offices aforesaid, may change such agent or person and substitute another person or agent for the purposes aforesaid; Provided, however, every such person or agent mentioned in this act shall at the time of his appointment be a resident of this State; And provided further, however, if any person or agent designated and certified as prescribed in this act, shall die or remove from this State, then the foreign corporation for which such person or agent has been so designated and certified shall, within ten days after the death or removal as aforesaid of such agent or person in the same manner as is prescribed in section one of this act, substitute, designate and certify the name of another person or agent for the purposes aforesaid, and all process, orders, rules and notices mentioned in section two of this act may be served on or given to such substituted person or agent with like effect as is prescribed in said section two of this act.

§ 5. That any foreign corporation engaging in, prosecuting or transacting any business of any kind within the limits of this State on or after the said first day of June, A. D., 1897, without first having complied with the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars, nor more than five hundred dollars for each and every offense. Any agent of any foreign corporation that shall transact any business within the limits of this State for any foreign corporation before such foreign corporation has complied with all of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each and every offense.

§ 6. This act shall be and is a public act.

(Passed at Dover, May 12, 1897.)

See Const., art. IX, § 5.





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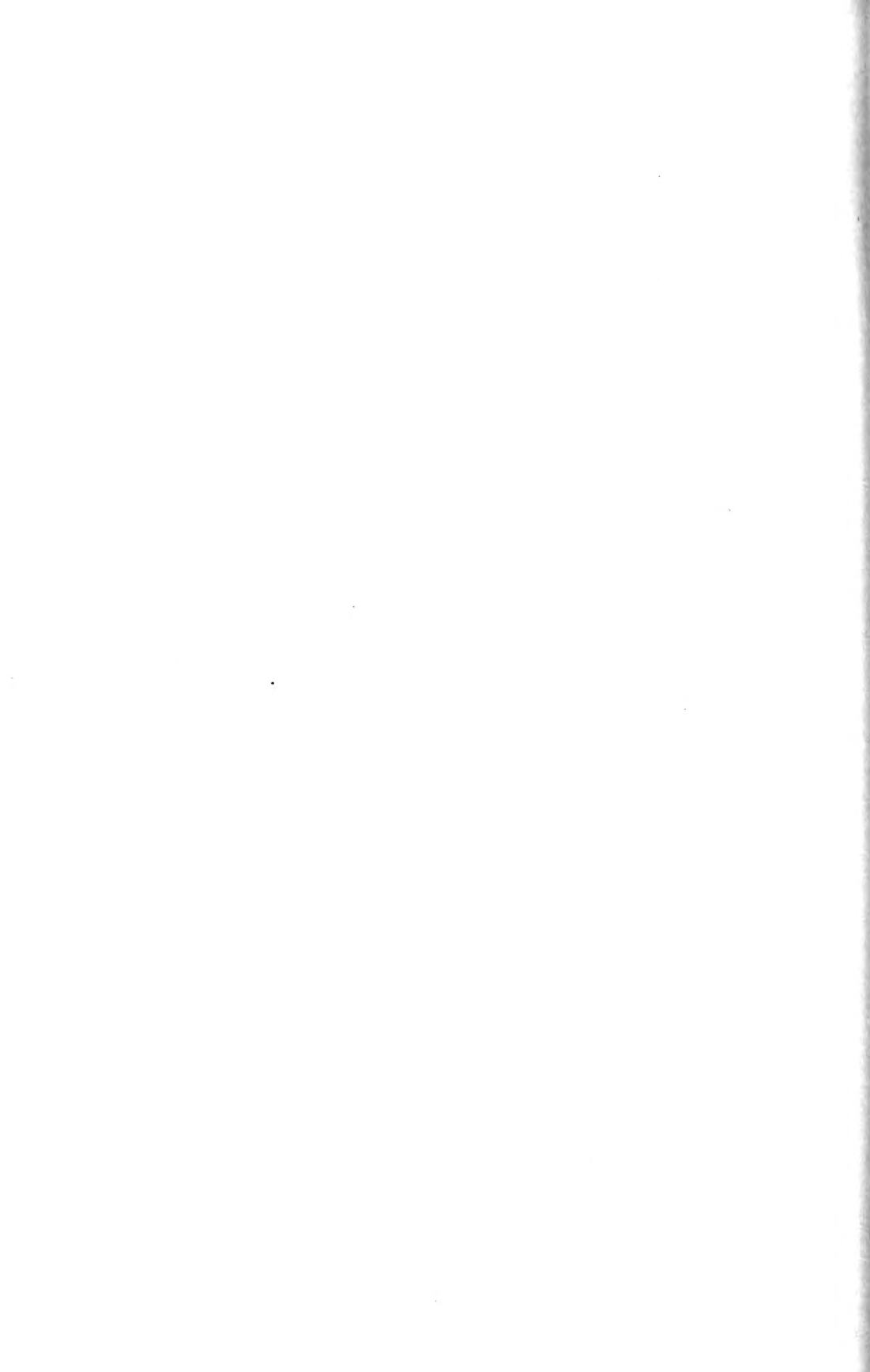
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# FLORIDA.

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§ 8. No person or corporation shall be relieved by any court from the payment of any tax that may be illegal, or illegally or irregularly assessed, until he or it shall have paid such portion of his or its taxes as may be legal, and legally and regularly assessed.

§ 10. The credit of the State shall not be pledged or loaned to any individual, company, corporation or association; nor shall the State become a joint owner or stockholder in any company, association or corporation. The legislature shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.

#### ARTICLE XVI.

##### Miscellaneous Provisions.

§ 16. The property of all corporations, except the property of a corporation which shall construct a ship or barge canal across the peninsula of Florida, if the legislature should so enact, whether heretofore or hereafter incorporated, shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes.

See Revenue Act of 1895, at p. 17.

[A transfer of property subject to taxation by persons in their individual capacity to themselves as constituting a corporation, does not constitute such corporation an innocent purchaser of said property so as to defeat the State's claim for taxes thereon. *Bloxham v. R. R. Co.*, 35 Fla. 625; s. c., 17 So. Rep. 902.]

A corporation from which taxes are due the State cannot defeat the collection thereof by vesting its property subject to taxation in another corporation, of which it remains a constituent part. *Id.*]

§ 29. No private property nor right of way shall be appropriated to the use of any corporation or individual until full compensation therefor shall be first made to the owner, or first secured to him by deposit of money; which compensation, irrespective of any benefit from any improvement proposed by such corporation or individual, shall be ascertained by a jury of twelve men in a court of competent jurisdiction, as shall be prescribed by law.

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See 21 Fla. 353; 12 id. 138.

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1023. Effect of service upon a corporation.

1024. Service upon domestic corporation in the absence of officers or agents.

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1. Upon the president or vice-president or other head of the corporation. In the absence of such head:

2. Upon the cashier or treasurer, or secretary, or general manager; or, in the absence of all the above:

3. Upon any director of such company; or, in the absence of all of the above:

4. Upon any business agent resident in the county in which the action is brought.

5. If a foreign corporation shall have none of the foregoing officers or agents in this State, service may be made upon any agent transacting business for it in this State.

Action to be commenced where. § 1001. Form of process. § 1011. See § 2121(2), note.

[Service of process on officers. State et al. v. R. R. Co. et al., 15 Fla. 201.]

§ 1023. After service upon a corporation, the same proceedings to final judgment shall be had against such corporation as are had in other suits at law after the return of execution of summons ad respondendum.

§ 1024. When process against any corporation of this State cannot be served owing to the failure of said corporation to elect officers or appoint agents, their absence from the State for a period of six months before the issuing of said writ, or because they are unknown, it shall be the duty of the officer to return said writ, with the causes of his inability to serve the same, and upon the return of said writ as aforesaid, the judge of the court from which the same shall have issued shall make an order at any time, setting forth the names of the parties, the nature of the action, suit or other proceeding, the court in which the same has been instituted, and requiring the said corporation to appear and defend the said action, suit or other proceeding, and the publication of said order once a week for the space of two months in some newspaper published in the county in which said action, suit or other proceeding shall be instituted, shall be a full and sufficient notification to the said corporation of the institution of said action, suit or other proceeding. However no judgment by default or decree pro confesso shall be taken or rendered against said corporation until due proof shall have been made of the publication of said order, as hereinbefore provided.



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§ 1211. If such writ cannot be satisfied in whole or in part, for want of property of the defendant subject to levy and sale out of which to satisfy the same, upon petition of the judgment creditor, or of his agent or attorney, the circuit court sitting in chancery within whose circuit such corporation may have been doing business, or in which any of its effects are to be found, may by order sequester the property, things in action, goods and chattels of such corporation, for the purpose of enforcing such judgment, and may appoint a receiver for the same, and the receiver so appointed shall be subject to the rules prescribed by law for receivers of the property of other judgment debtors. His power shall extend throughout the State.

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1215. Stock owned in corporations, how ascertained.

1216. Creditor to furnish description of stock.

1217. Effect of levy.

1218. Sale, manner of.

§ 1212. Shares of stock in any corporation incorporated by the laws of this State shall be subject to levy of attachments and executions, and to sale under executions on judgments or decrees of any court in this State.

See §§ 1190, 1210, 1211, 2152, 2153.

§ 1213. Attachments or executions may be levied on such shares by the sheriff or other officer holding such process, exhibiting the

same to the president, vice-president, general manager, or other chief officer, or to the officer having custody of the stock books or transfer books of the corporation in which the attachment or judgment debtor may own shares of stock, and by informing such officer that a levy is thereby made upon such debtor's shares of stock in such corporation, and such sheriff or other officer shall indorse such levy on such process.

§ 1214. At the time of making such levy as aforesaid, the officer holding such process shall demand of the officer of the corporation to whom the process shall be exhibited a statement in writing of the number of shares of stock owned by such debtor in said corporation, together with the amount still due thereon. It shall be the duty of the said officer to furnish said statement at once to the said sheriff or other officer (who shall indorse the same on said process); and any officer of any corporation refusing or failing to make such statement upon such demand, or making an untrue statement in response to such demand, shall be guilty of a misdemeanor, and shall, upon conviction, be fined a sum of not less than one hundred dollars or be imprisoned in the county jail not less than ten days.

§ 1215. If such attachment or execution creditor shall believe that the debtor owns shares of stock in said corporation at the time of the levy aforesaid which do not appear in the answer of the officers of the corporation to the demand of the sheriff or other officer holding the process to belong to the said debtor, he may propound interrogatories to the officers of said corporation or any of them, and to the said debtor, touching the ownership of any shares of stock in said corporation by said debtor at the time of said levy, and the persons to whom such interrogatories are propounded shall be required to file their answers under oath to the same within ten days in the office of the clerk of the circuit court of said county. And if any person shall refuse to answer such interrogatories, or shall answer any of them untruly, he shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars or be imprisoned not less than ten days in the county jail. If the answers to said interrogatories shall state the ownership by the said debtor of stock in said corporation not disclosed by the answers of the officers of said corporation, made under section 1214, the sheriff or other officer holding the said process shall indorse thereon a description of said stock.

§ 1216. If the creditor shall believe the answers of the officers of such corporation to the sheriff or other officer holding the process as aforesaid, and the answers of such officers of the corporation and the debtor, to said interrogatories to state untruly the stock owned by such debtor, he may furnish to the sheriff or other officer holding the

process a description of the stock which he believes the debtor to own; and it shall be the duty of the sheriff or other officer to proceed to sell the debtor's interest in such stock as hereinafter provided.

§ 1217. From the time of the levy of said process as provided in section twelve hundred and thirteen, all the shares owned by the said debtor in such corporation, no matter how the description of it may be thereafter ascertained, shall be bound thereby, and no transfer of the same not then entered upon the transfer book of the said corporation shall be valid and effectual as against the levy of the said process. And if any person shall antedate or procure to be antedated any entry upon the books of said corporation for the purpose of avoiding the effect of the said levy, he shall be guilty of a misdemeanor, and shall upon conviction, be fined not less than one hundred dollars or be imprisoned in the county jail not less than ten days.

§ 1218. Shares of stock levied upon as herebefore provided shall be sold in the same manner as other property levied upon. The notice of such sale shall contain a statement of the number of shares to be sold, the corporation in which said shares are held, the amount paid in thereon, and the amount unpaid. The sheriff or other officers conducting said sale shall execute to the purchaser thereat a bill of sale of said shares, and such bill of sale shall vest in the purchaser all the title of the judgment debtor, and upon the presentation of such bill of sale to the secretary or other officer controlling the transfer books of such corporation, it shall be his duty to transfer the said stock from the judgment debtor to the purchaser.

#### ARTICLE V. EXECUTION AGAINST STOCK-HOLDERS FOR CORPORATE DEBT.

Sec. 1219. See section 2152.

#### Fourth Division. Of Real and Personal Property.

#### TITLE I. CONTRACTS RELATIVE TO REAL AND PERSONAL PROPERTY.

##### CHAPTER I.

##### Alienation by Deed.

##### ARTICLE II.

Sec. 1955. Conveyances by corporations.

§ 1955. Any corporation may convey lands by deed sealed with its common seal and signed in its name by the president or chief executive officer of the corporation.

See § 2121(4).

#### TITLE III. CORPORATIONS.

- Ch. 1. General provisions.  
2. Corporations for profit.

##### CHAPTER I.

##### General Provisions.

Sec. 2119. This title extends to all corporations.

2120. Corporations not dissolved by failure to elect officers.

2121. Powers of corporations.

§ 2119. The provisions of this title shall extend to all corporations, whether chartered by special act of the legislature or under general law in their respective classes, but shall not in anywise affect the validity of any incorporation heretofore created.

See Const., Dec. of Rights. § 17.

§ 2120. No corporations shall be deemed to be dissolved by failure to elect or appoint officers on the given day, but the officers previously elected or appointed shall hold their offices until the qualification of their successors.

Dissolution. § 2154 et seq. Service of summons when corporation fails to elect officers. § 1024.

§ 2121. Every corporation by virtue of its existence as such shall have power:

[Where a grant of power is clearly defined, and no mode is prescribed for its exercise, corporation may adopt such mode as, in its judgment, will secure the purpose contemplated. *Ins. & Tr. Co. v. Lanier*, 5 Fla. 110.]

1. To have succession by its corporate name for the period limited in its charter and when no period is limited, perpetually.

Change of name. §§ 2150, 2151. Misnomer in deed. § 2160.

[Duration of franchise granted by legislature fixed by Constitution or by the enactment itself. *R. R. Co. v. Allen*, 15 Fla. 637.  
Misnomer fatal to indictment of officer. *Alden v. State*, 18 Fla. 187.]

2. To sue and be sued in any court of law or equity.

See §§ 1001, 1011, 1019, 1023, 1024, 1190, 1210 et seq., and 2152 et seq. Corporation may sue its members for arrears or other debts. § 2161. Want of legal organization not a defense. § 2159.

[Corporation may sue on note made payable to agent. *Ins. & Tr. Co. v. Gray*, 3 Fla. 282.

Action of trespass vi et armis will lie against a corporation. *Edwards v. Bank*, 1 Fla. 136.

Form of action against corporation, how determined. *Land Co. v. Mitchell*, 4 Fla. 192.

Shareholder cannot testify for corporation. *Ins. & Tr. Co. v. Cole*, 4 Fla. 359.

Corporation can maintain action upon an implied promise for collection of assessments. *Kirksey v. Plankroad Co.*, 7 Fla. 23; 6 id. 262, distinguished.

Injunction to restrain irreparable damage to vested rights. *F., etc., R. R. Co. v. P., etc., R. R. Co.*, 10 Fla. 145.

An individual stockholder cannot prosecute an appeal from a judgment against the corporation of which he is a member. *State v. R. R. Co.*, 15 Fla. 690.

Unincorporated company cannot sue in its company name. *Richardson v. Smith*, 21 Fla. 336.]

Powers of corporations; incorporation — R. S., §§ 2121 (3-7), 2122, 2123.

3. To make contracts and to adopt and use a common seal and alter the same at pleasure.

Contracts with de facto corporation. § 2159. Misnomer of corporation in an instrument. § 2160. See § 1955.

[Party cannot avoid contract with corporation upon pretense of mismanagement or abuse of powers by board of directors. *Ins. & Trust Co. v. Lanier*, 5 Fla. 110.

Contract with corporation not voidable by reason of abuse of corporate powers. *Id.* Charter need not expressly confer power to contract by agent. *Land Co. v. Mitchell*, 4 Fla. 192.

Private seals of a committee not seal of corporation in making contract. *Mitchell v. Land Co.*, 4 Fla. 200.

Bond given in attachment suit must be under corporate seal. *Tanner v. Hall*, 22 Fla. 391.

Where a new corporation is created by the consolidation of two or more other corporations, and no provision is made by statute or the articles of incorporation for the payment of the debts and liabilities of the constituent corporation, the new corporation assuming all the debts and liabilities of the constituent companies, which follow as an incident of the consolidation. *Bloxham v. R. R. Co.*, 35 Fla. 625; s. c., 17 So. Rep. 902.

A corporation resident in one State can contract in another. *Duke v. Taylor*, 19 So. Rep. 172.]

4. Where special provision is not made by law or otherwise to hold, buy, convey or mortgage such personal or real estate as the purposes of the corporation shall require, also to take, hold and convey such other real and personal property as shall be necessary for the corporation to acquire in order to obtain or secure the payment of any indebtedness or liability to it.

See § 1955. Eminent domain. § 2158. Misnomer in instrument. § 2160.

[Delivery of deed to officer or servant is a delivery to corporation itself. *Ins. & Tr. Co. v. Cole*, 4 Fla. 359.

Deed by president of corporation, valid, when. *Union, etc., v. Call*, 5 Fla. 409. Burden of proof on party contesting it. *Id.*

A mortgage by a corporation organized prior to June, 1888, acknowledged by the vice-president, was not necessarily invalid on the ground that the vice-president may have been interested in the mortgage. *Fla., etc., Ex. v. Rivers*, 36 Fla. 575; s. c., 18 So. Rep. 850.]

5. To appoint such subordinate officers and agents as the affairs of the corporation shall require, and to allow them suitable compensation.

See Act of 1893 to prevent blacklisting, p. 16.

[Charter need not expressly confer power to contract by agent. *Land Co. v. Mitchell*, 4 Fla. 192.]

6. To make by-laws.

See § 2137.

[Power of directors to amend by-laws. *Stockton v. Harmon*, 32 Fla. 312; s. c., 13 So. Rep. 833.]

7. To increase or diminish by a vote of its members, cast as the by-laws may direct, the number of directors, managers or trustees, so, however, that the number shall not be less than three, nor more than thirteen.

See §§ 2138, 2139, 2140.

## CHAPTER II.

### Corporations for Profit.

- Art. 1. Authority to form corporations.  
2. Method of incorporation.  
3. Capital stock.  
4. By-laws.  
5. Officers.  
6. Meetings.  
7. Records.  
8. Increase and reduction of capital stock.  
9. Amendment of charter and change of name.  
10. Execution.  
11. Dissolution.  
12. Miscellaneous.

#### ARTICLE I. AUTHORITY TO FORM CORPORATIONS.

Sec. 2122. Number of incorporators.

§ 2122. Any three or more persons may associate themselves and become incorporated for the transaction of any lawful business of a public or private character, including all works of internal improvement.

See Const., art. III, § 25.

[Rules of interpretation of grants of franchises; strictly construed against grantees. *Gas Co. v. Pensacola*, 33 Fla. 322; s. c., 4 So. Rep. 826. And liability to the public. *R. R. Co. v. R. R. Co.*, 10 Fla. 145.

An attempted organization in Florida under the charter of the laws of another State, no authority therefor being shown, renders participants liable as partners in Florida. *Duke v. Taylor*, 19 So. Rep. 172.

A corporation has its domicile at the place of its creation. *Id.* And if created under the laws of one State cannot organize in another. *Id.*

A corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It must dwell in the place of its creation, and cannot migrate to another sovereignty. *Taylor v. Brannan*, 35 Fla. 297; s. c., 17 So. Rep. 552. A corporation created under the laws of any other State cannot come to Florida and exercise corporate functions without becoming incorporated under laws of Florida, and if it attempts to do so, its liabilities contracted here, rest upon its members or stockholders, in this jurisdiction, as partners. *Id.*]

#### ARTICLE II. METHOD OF INCORPORATION.

Sec. 2123. Requisites of proposed charter.

2124. Notice of intention to apply for letters patent.

2125. Issue and delivery of letters patent.

2126. Letters patent and charter or copies to be evidence.

2127. Corporation not to transact business until certain requisites complied with.

§ 2123. The proposed charter of an intended corporation must be subscribed by three or more persons, and shall set forth:

1. The name of the corporation and the place of business.

2. The general nature of the business to be transacted.

3. The amount of the capital stock authorized, the number and par value of the shares into which it is divided, and the terms and conditions upon which it is to be paid in.

4. The term for which it is to exist.

5. By what officers the business of the company is to be conducted, and the times at which they will be elected, and the names of the officers who are to conduct the business until those elected at the first election shall be qualified.

6. The highest amount of indebtedness or liability to which the corporation can at any time subject itself.

7. The names and residences of the subscribers.

The proposed charter shall be acknowledged by at least three of the subscribers before some officer authorized to take the acknowledgment of deeds.

See § 2122, note.

[Contracts by and with de facto corporations. See § 2159, and note. Defectively organized corporation cannot be attacked collaterally, but only in direct proceedings instituted by the State for that purpose. *Id.* But see *Duke v. Taylor*, 19 So. Rep. 172.]

§ 2124. The proposed charter, together with notice of the intention to apply to the governor for letters patent thereon, shall be published for four successive weeks, once each week, in some newspaper published in the county where the place of business is to be located, which notice shall be signed with the names of at least three of the subscribers, and the said proposed charter shall be on file in the secretary of State's office during the four weeks of publication.

§ 2125. The proposed charter, accompanied by the proof of publication of notice, shall then be produced by the governor, who shall examine the same, and if he find it to be in proper form and for an object authorized by law, and that due notice has been given, letters patent shall issue incorporating the subscribers, their associates and successors into a body politic and corporate, in deed and in law, by the name chosen, for the purposes and upon the terms named in the charter. The secretary of State shall annex to the letters patent a certified copy of the charter, retaining the original on file, and before delivering the letters patent shall record them and the charter in a book kept for that purpose, and shall receive from the corporation before such delivery a charter fee of one hundred dollars for the State treasury, besides such other fees as are allowed by law.

Corporation shall have succession by its corporate name. § 2121(1).

§ 2126. The letters patent, or a certified copy thereof given by the secretary of State under the great seal, shall be conclusive evidence of the existence of the corporation in all actions and proceedings where the question of its existence is only collaterally involved, and prima facie evidence in all other actions and proceedings. The original charter with the certificate of the recording thereof in the office of the secretary of State indorsed thereon, or a copy from the record thereof certified by the secretary of State, shall be evidence of the contents of the charter in all actions and proceedings.

Corporation cannot deny its own legal existence. § 2159.

§ 2127. No corporation shall transact any business until it has had the letters patent with a certified copy of the charter recorded in the office of the clerk of the circuit court of the county wherein the principal place of business is located, and has also filed with the secretary of State and with the said clerk (except in the case of building and loan associations) duplicate affidavits by its treasurer that ten per cent. of its capital stock has been subscribed and paid. If any corporation shall transact any business before complying with these requirements, or if any corporation chartered by a special act of the legislature shall transact any business before filing said duplicate affidavits and paying a charter fee of one hundred dollars to the secretary of State for the State treasury, its stockholders, or in the latter case its incorporators and stockholders, shall be personally liable for all of the corporation debts as if they were members of a general partnership, and not stockholders of a corporation.

#### ARTICLE III. CAPITAL STOCK.

- Sec. 2128. Par value and payment of subscription.  
 2129. Directors to make calls for payments.  
 2130. Stock to be personal estate.  
 2131. Transfer.  
 2132. Executors, etc.; no personal liability for calls.  
 2133. Treasurer to keep list of stockholders.  
 2134. Return of stock and stockholders to comptroller.  
 2135. Transfer to avoid taxation.  
 2136. Stock statement to be filed with comptroller.

§ 2128. The capital stock of all corporations shall be divided into shares of not less than ten dollars each, and all payments of stock, and of interest money shall be made in lawful money of the United States, unless it shall be stated in the charter that the capital stock, or some therein designated portion, shall be payable in property, labor or services at a valuation to be fixed by the corporators, which valuation, as well as a

general description of the property, shall be contained in the charter.

Shares of stock are taxable. See Revenue Act of 1895, at p. 17. Fraudulent issue of certificates, penalty. § 2468.

[Omission to designate in charter the amount of capital stock. *Kirksey v. Road Co.*, 7 Fla. 23.]

§ 2129. The directors may require the subscribers to the capital stock to pay the amounts by them respectively subscribed in such manner and in such installments as may be required in the charter or by-laws. If any stockholder neglect to pay any installment, so required, the directors may in accordance with the provisions to be made in the by-laws forfeit and sell his stock, and shall apply the proceeds to the expenses of sale and to the unpaid installments, returning the balance, if any, to the delinquent stockholder.

[Corporation may maintain action upon an implied promise for collection of assessments. *Kirksey v. Plankroad Co.*, 7 Fla. 23, distinguishing *Barbee v. Road Co.*, 6 id. 262, and *Dibble v. Same*, id. 279.

Subscription to stock, terms of, construed. *Kirksey v. Plankroad Co.*, supra. Where the body of subscription contains stipulations, as for road pursuing particular route, such stipulations are conditions precedent and must be strictly complied with. *Martin v. R. R. Co.*, 8 Fla. 379. Oral testimony to vary terms of subscription inadmissible except to show fraud or mistake. Id.

Rights and remedies of stockholders. See *Bowes et al. v. Hoeg*, 15 Fla. 403.

A stockholder may discharge his liability by payment of bona fide claim against the corporation. *Hood v. French*, 19 So. Rep. 165. Or by showing a bona fide debt due him from the corporation. Id.]

§ 2130. The stock of every corporation shall be deemed personal estate.

And is taxable as such. See Revenue Act of 1895, at p. 17.

§ 2131. Stock shall be transferable in the manner prescribed in the by-laws, but no stock shall be transferred until all previous assessments thereon shall have been fully paid in. Every person becoming a stockholder by such transfer shall, in proportion to his stock, succeed to all the rights and liabilities of the prior holder.

Fraudulent transfer, penalty. §§ 2135, 2468. Fraudulent issue, penalty. § 2468.

[Sale of stock — caveat emptor. *Foster et al. v. Ambler*, 24 Fla. 519; s. c., 5 So. Rep. 263.]

§ 2132. No person holding stock as executor, administrator, guardian or trustee shall be personally liable as stockholder for any calls or installments on part paid stock, but the estate and funds in his hands shall be liable in like manner and to the same extent as a testator, intestate, ward or cestui que

trust would be, if he had been living or competent to buy and hold the same stock in his own name.

§ 2133. The treasurer or cashier shall keep an accurate list of the stockholders with the number of shares owned by each, which shall at all times upon written application by any stockholder be open to his inspection, and if such officer refuse to exhibit the list, he shall forfeit fifty dollars for each offense to be deducted from his salary.

Books of corporation admissible in evidence. § 2470. False entry in books, felony. § 2468.

§ 2134. The treasurer or cashier, or in the absence of such officers, the president or directors, shall annually make a return to the State comptroller, containing the name and residence of each stockholder with the number of shares belonging to him and the par and cash market value of such shares, and shall also state the whole amount of the capital stock and the amount actually paid in, and the real estate subject to assessment for taxes and the personal estate, and if such officers refuse or neglect to make such return, the corporation shall forfeit the sum of not less than one hundred dollars for each offense to the use of the State, to be recovered in any action of tort.

§ 2135. If any stockholder fraudulently transfer stock to avoid taxation, he shall forfeit to the use of the State one-half of the par value of the stock thus transferred and if he knowingly misinform the corporation in any way to impede or prevent the assessment for collection of his tax, he shall forfeit to the State a sum not less than one hundred dollars nor more than five hundred dollars, the said sums to be recovered by action of tort.

Transfer of stock. § 2131. Fraudulent transfer, felony. § 2468.

§ 2136. A statement of the amount of the capital stock subscribed and of the amount actually paid in and of the indebtedness of the corporation shall be filed once in six months in the office of the State comptroller, or oftener whenever the comptroller shall direct.

#### ARTICLE IV. BY-LAWS.

Sec. 2137. By-laws.

§ 2137. The by-laws shall be taken and deemed to be the law of the corporation subordinate to its charter and the Constitution and laws of this State and of the United States. They shall be made by the stockholders at the first annual meeting or at any special meeting called for that purpose, unless the charter prescribes another body or a different mode. They shall prescribe the time and place of meetings of the corporation, the powers and duties of its officials

and such other matters as may be pertinent and necessary for the business to be transacted, and may contain penalties not exceeding twenty-five dollars in amount for the breach thereof.

See § 2121(6).

[Power of directors to amend by-laws. Stockton v. Harmon, 32 Fla. 312; 13 So. Rep. 833.]

#### ARTICLE V. OFFICERS.

Sec. 2138. Officers; choice, term and number.

2139. Vacancies.

2140. Time of election.

§ 2138. The business of the corporation shall be managed and conducted by a president, a board of directors, a treasurer or cashier and such other officers and agents as the corporation may authorize. The directors shall be chosen annually by the stockholders at the time fixed in the charter; they shall be stockholders qualified to vote at the election at which they are chosen. The manner of the choice and of the choice of all other agents and officers shall be prescribed by the by-laws. One of the directors shall be chosen president by the directors or by the stockholders, as the by-laws shall direct. The stockholders may, at a meeting called for that purpose, determine, fix or change the number of directors that shall thereafter govern its affairs. A majority of the whole number of directors shall be necessary to constitute a quorum.

See §§ 2121(7), 2163, 2467.

[Sureties on bond of an officer of a corporation not released by neglect or laches of other officers. B. & L. Assn. v. Price, 16 Fla. 204; s. c., 19 id. 127.]

More fact that president, unknown to other directors, is interested in contract let by company does not make contract void, if it is otherwise free from fraud. R. R. Co. v. Kittel, 52 Fed. Rep. 62.

Execution of mortgage by secretary de facto. Id.

It is not necessary that a director or managing agent of the corporation should be a stockholder therein unless it is expressly required by the statute or charter. Fla., etc., Ex. v. Rivers, 36 Fla. 575; s. c., 18 So. Rep. 850.]

§ 2139. In case of the death, removal or resignation of the president or treasurer or other officer, or of any of the directors the remaining directors may supply the vacancy thus created until the next election.

§ 2140. All officers who are to be elected by the stockholders shall be elected on the day appointed by the charter for that purpose, but if from any cause an election shall not be held on that day, the corporation shall not on that account be dissolved, but an election shall be called by the directors as soon as practicable thereafter, due notice of the meeting for that purpose being given according to law.

Process against corporation when no officers are elected. § 1024.

#### ARTICLE VI. MEETINGS.

Sec. 2141. Stockholders' and directors' meetings. Notice.

2142. Meetings called by justice of the peace.

2143. Same. Presiding officer.

2144. How meeting may be held when not legally called.

2145. Quorum.

2146. Voting. Proxies.

§ 2141. The time, place and manner of calling stockholders' meetings (except when regulated by law or by the charter), or meetings of the directors, shall be fixed by the by-laws, but notice of stockholders' meetings shall always be published in a newspaper of the county wherein the place of business is located for at least two weeks, once each week, before such meeting, and where a stockholder's residence is known, a notice shall also be served on him personally, or mailed to his usual post-office address at least two weeks before the meeting.

§ 2142. Whenever from want of sufficient by-laws, or of officers duly authorized, or from the neglect or refusal of such officers, or from any other legal impediment, a legal meeting of any corporation cannot otherwise be called, any justice of the peace in the county wherein it is desirable to hold such meeting, on a written application of stockholders holding one-third of the stock, may issue a warrant to any of said stockholders directing him to call a meeting of the corporation by giving the usual notice.

§ 2143. When a meeting is called by such warrant, the person to whom the warrant is directed shall preside until a presiding officer be chosen, if there be no officer present whose duty it may be to preside.

§ 2144. When stockholders who hold four-fifths of the stock shall be present at a meeting, however called or notified, and shall sign a written consent thereto on the record of the meeting, the acts of such meeting shall be as valid as if legally called and notified.

§ 2145. A majority of the stock shall constitute a quorum at stockholders' meetings.

§ 2146. In all elections of officers and in deciding all questions at stockholders' meetings, each stockholder shall be entitled to one vote on each share of stock held by him, but no stockholder whose liability for unpaid assessments or calls is past due shall be allowed to vote. Stockholders may vote by proxy, duly authorized in writing.

#### ARTICLE VII. RECORDS.

Sec. 2147. To be open to inspection.

§ 2147. The secretary, or other officer or agent of a corporation, who by the by-laws is made the custodian of its books, records, papers or other property, shall keep the same in his possession, and at all times dur-

Increase, etc., of stock; charter amendments; execution — R. S., —§ 2148-2152.

ing business hours have the same ready to be exhibited to any officer, director or committee appointed by the stockholders representing one-tenth of all the subscribed stock, and shall furnish them, or either of them, transcripts from the records or proceedings of the board of directors under his official hand and seal on the payment to him of the same fee as that required by law to the clerk of the circuit court for transcripts from the records of his office; and the said custodian shall, on resigning his office, or otherwise vacating the same, make over all such books, records, papers and all other property of the corporation which are in his possession to his successor in office, or where no successor has been appointed or elected, to the board of directors, if any, or to the person or persons appointed by the stockholders, and such custodian on being duly subpoenaed to appear as a witness in any case on trial in any court of justice in this State shall attend and produce such books and records of the corporation as may be demanded in such subpoena to be used on such trial.

Making false entries in books, penalty. § 2467.  
Books to be evidence. § 2470.

#### ARTICLE VIII. INCREASE AND REDUCTION OF CAPITAL STOCK.

Sec. 2148. Method of increase.  
2149. Method of reduction.

§ 2148. Any corporation may increase its capital stock to any amount by holding an election of the stockholders at its place of business, having published notice of the time and place and object of the meeting once a week for four weeks prior thereto, in one newspaper published in the county, and having served or mailed the usual notice for stockholders' meetings, and if at such meeting two-thirds of all the stockholders in the corporation shall vote to increase the capital stock, it shall be the duty of the president within thirty days thereafter to make a return to the secretary of State, under oath, of the amount of such increase, and the terms on which such additional stock is issued, and from the time the said return is filed the increase of stock shall be authorized and when issued shall become a part of the capital.

§ 2149. Any corporation may reduce its capital stock, or alter or change the par value of the shares thereof, within the limits allowed by law, by unanimous vote of the stock, in the same manner as is provided for the increase of capital stock, with the certificate of the State comptroller indorsed upon the affidavit that, in his judgment, the ability of the corporation to meet its outstanding indebtedness and liabilities will not be impaired thereby.

#### ARTICLE IX. AMENDMENT OF CHARTER AND CHANGE OF NAME.

Sec. 2150. Method of amending charter.  
2151. Change of name.

§ 2150. Any corporation desiring to alter or amend its charter shall adopt the proposed alteration or amendment by a vote of three-fourths of all its stock, at a meeting held for that purpose, and called and notified as provided for meetings for increase of capital stock. If the proposed alteration or amendment shall be so adopted, the corporation shall give four weeks' notice once each week of the intention to apply to the governor therefor, in some newspaper published in the county wherein the principal place of business is located, setting forth the desired alteration or amendment. The corporation shall prepare a certificate, under the common seal, of the proposed alteration or amendment as adopted as aforesaid, which certificate shall be on file in the secretary of State's office during the time of publication, and afterwards, together with the proof of publication and notice, shall be produced to the governor, who shall examine the same, and if he find it to be in proper form, and that due notice has been given, and that the proposed alteration or amendment will be beneficial and lawful, and not injurious to the community, and is in accord with the purposes of the charter, he shall approve thereof, and thereupon letters patent shall issue reciting the alteration, or amendment, and the said letters patent shall then be recorded in the secretary of State's office and then in the office of the clerk of the circuit court where the original charter was recorded, and from the date of the recording in the secretary of State's office, the said alteration or amendment shall be deemed and taken as a part of the charter.

§ 2151. Any corporation desiring to change its name may so resolve at any general meeting of the stockholders, and upon filing a certificate of the resolution under the common seal, in the office of the secretary of State, letters patent shall issue, reciting the change of name, which letters patent shall be recorded as provided in the last section. No two corporations shall bear the same corporate name.

#### ARTICLE X. EXECUTION.

Sec. 2152. May issue against stockholders.  
2153. Custodian of records to give sheriff necessary information.

§ 2152. If any execution shall issue against the property or effects of any corporation, and there cannot be found whereon to levy, then such execution may be issued against any of the stockholders to an extent equal in amount for so much as may remain unpaid upon the subscription and no further, and all property whether real or personal of any stockholder in any corporation aforesaid

shall be exempt from the debts and liabilities of such corporation contracted in its corporate capacity, except the stock of said stockholder of or in said corporation to the extent mentioned aforesaid.

See §§ 1190, 1210-1218.

§ 2153. The clerk or other officer having charge of the books, records and papers of any corporation, on demand of any officer holding execution against the same, shall furnish such officer with the name, places of residence and the amount of liability of every person liable as aforesaid, and if such officer refuses so to do he shall, upon complaint thereof, be liable to a fine not exceeding five hundred dollars.

#### ARTICLE XI. DISSOLUTION.

- Sec. 2154. Dissolution on application of majority.  
 2155. Corporate existence continued for purposes of settlement.  
 2156. Stockholders' liability for debts unpaid at dissolution.  
 2157. Proceedings on voluntary or other dissolution.

§ 2154. When a majority in interest of the stockholders of a corporation desire to close their concerns, they may apply by petition to the circuit court, setting forth the grounds of their application, and the court on due notice by publication for a reasonable period given to all parties interested may hear the matter, and for reasonable and just cause decree a dissolution of the corporation, and the corporation so dissolved shall be deemed and held extinct in all respects as if its charter had expired by its own limitation, and the settlement of the affairs of such corporation so dissolved shall be managed as prescribed in cases of voluntary dissolution in section 2157.

See § 2120.

[Dissolution of corporation does not extinguish its debts. *Howe v. Robinson*, 20 Fla. 352. Dissolved corporation. Relieving creditors of. *Id.* Limitations of actions against. *Id.* *Seire facias* does not lie upon a judgment against. *Id.*]

§ 2155. All corporations shall continue bodies corporate for the term of three years after the time of dissolution from any cause, for the purpose of prosecuting or defending suits by or against them and enabling them to gradually settle their concerns, to dispose of and convey their property and to divide their capital stock, but for no other purpose.

§ 2156. If any corporation dissolved leaving debts unpaid, suits may be brought against any persons who were stockholders at the time of such dissolution, without joining the corporation in such suit, for so much as may remain unpaid upon his or her subscription and no further, the collection to

be made from the stock of each stockholder respectively only, and if any number of stockholders (defendants in the case) shall not have property enough in stock to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders and collections made accordingly, deducting from the amount a sum in proportion to the amount remaining unpaid on the plaintiff's subscription at the time the corporation dissolved.

[For discussion of personal liability of stockholders, see *Flash et al. v. Conn*, 16 Fla. 428.

Stockholders liable, upon dissolution, for debts to an amount equal to par value of stock held by them. *Gibbs v. Davis*, 27 Fla. 531; s. c., 8 So. Rep. 633. Not necessary that dissolution be established by legislative enactment or judicial proceedings before creditors can proceed against stockholders. *Id.* Liability of stockholders discussed. *Id.*]

§ 2157. Upon the voluntary dissolution of any corporation already created, or which may hereafter be created, by the laws of this State, the president and directors, at the time of its dissolution, shall be trustees of such corporation, with full power to settle its affairs, collect its outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them; they may sue for and recover such debts and property by the name of the trustees of such corporation, and may also be sued by the same, and such trustees shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall have come into their hands, but in the event of dissolution from any other cause a petition may be filed in the circuit court by any three or more creditors or stockholders of any corporation, praying that a receiver be appointed, and the court, or judge thereof at chambers, shall hear and consider said petition, and for just and reasonable grounds shall grant said petition and appoint a receiver, and unless the president and directors of such corporation shall swear that the corporation is solvent and exhibit proof of the same satisfactory to the court or judge, such petition shall be granted and a receiver appointed, but no voluntary dissolution shall be made or permitted after the institution of any suit or proceeding against any corporation for an involuntary or forced dissolution.

[Officers of insolvent corporation trustees for creditors. *Ins. & Trust Co. v. Lanier*, 5 Fla. 110.

Must be sued in county where office is kept. *Edwards v. Bank*, 1 Fla. 136.]



Miscellaneous; offenses — R. S., §§ 2158-2164, 2467, 2468.

## ARTICLE XII. MISCELLANEOUS.

- Sec. 2158. Eminent domain.  
 2159. Estoppel.  
 2160. Misnomer.  
 2161. Corporation may sue members.  
 2162. Diversion of funds.  
 2163. Dividend by insolvent corporations.  
 2164. Provisions of this chapter to be general.

§ 2158. The president and directors of any corporation organized for the purpose of constructing, maintaining or operating public works, or their properly authorized agents, may enter upon any lands, public or private, necessary to the business contemplated in the charter, and may appropriate the same, or may take from any land most convenient to their works any timber, stone, earth or other material which may be necessary for the construction and the keeping in repair of its works and improvements, upon making due compensation according to law to private owners.

See Const., art. VI, § 29.

§ 2159. No body of persons acting as a corporation under this chapter shall be permitted to set the want of legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with the corporation, or sued for an injury to its property or a wrong done to its interests be permitted to set up a want of such legal organization in his defense.

Certified copy of letters patent conclusive evidence. § 2126.

[Persons contracting with de facto corporation estopped from denying its corporate existence. *Booske v. Lee Co.*, 24 Fla. 550; s. c., 5 So. Rep. 247. But see *Duke v. Taylor*, 19 id. 172.

An attempted organization in Florida under the charter of the laws of another State, no authority therefor being shown, renders participants liable as partners in Florida. *Id.*

Where a corporation de facto extends its business, the stockholders are not liable as partners. *Id.*]

§ 2160. A misnomer of a corporation in any deed or instrument shall not vitiate the same if the corporation shall be therein sufficiently described to ascertain the intent of the parties, and this shall apply to all corporations of every character and for any lawful purpose.

[Misnomer in indictment of officer is fatal. *Alden v. State*, 18 Fla. 187.]

§ 2161. All corporations by any suit at law may sue for, recover and receive from their respective members all arrears, or other debts, dues, and other demands which may be owing to them, in like manner, mode and form as they might sue for and recover the same from any other person.

§ 2162. Diversion by a corporation of its funds or property to purposes or objects

other than those named in the charter, or the payment of dividends, leaving insufficient funds to meet outstanding liabilities, shall work a forfeiture of its charter and of all powers and privileges conferred.

§ 2163. If the directors shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for the debts of the corporation then existing to the extent of the dividends so declared. If, however, any director be absent at the time of making the dividend or shall at the time object thereto in writing, he shall not be so liable.

§ 2164. The foregoing provisions shall apply to every class of corporation for profit, except as limited by the special provisions of the sub-chapters hereof.

## Fifth Division. Crimes and Criminal Procedure.

### Part First. Crimes.

## TITLE II. OFFENSES AND PUNISHMENTS.

### CHAPTER IV.

#### Offenses against Property.

## ARTICLE V.

Sec. 2467. Making false entries, etc., on books of corporation.

2468. Fraudulent issue of certificate of stock of corporations.

2469. Issuing stock or obligation of corporation beyond authorized amount.

2470. Books to be evidence in such cases.

§ 2467. Any officer, agent, clerk or servant of a corporation who makes a false entry in the books thereof, with intent to defraud, and any person whose duty it is to make in such books a record or entry of the transfer of stocks, or of the issuing and cancelling of certificates thereof, or of the amount of stock issued by such corporation, who omits to make a true record or entry thereof, with intent to defraud, shall be punished by imprisonment in the State prison not exceeding ten years, or by fine not exceeding ten thousand dollars.

[Indictment of officer; misnomer fatal. *Alden v. State*, 18 Fla. 187.]

§ 2468. Any officer, agent, clerk or servant of a corporation, or any other person, who fraudulently issues or transfers a certificate of stock of a corporation to any person not entitled thereto, or fraudulently signs such certificate, in blank or otherwise, with the intent that it shall be so issued or transferred by himself or any other person, shall be punished by imprisonment in the State prison not exceeding ten years, or by fine not exceeding ten thousand dollars.

§ 2469. Any officer, agent, clerk or servant of a corporation, or any other person, who issues, or signs with intent to issue, any certificate of stock in a corporation, or who issues, signs or indorses with intent to issue any bond, note, bill or other obligation or security in the name of such corporation, beyond the amount authorized by law, or limited by the legal votes of such corporation or its proper officers; or negotiates, transfers or disposes of such certificate, with intent to defraud, shall be punished by imprisonment in the State prison not exceeding ten years, or by a fine not exceeding ten thousand dollars.

§ 2470. On the trial of any person under the three preceding sections, the books of any corporation to which such person has

access or the right of access shall be admissible in evidence.

#### ARTICLE VII.

Sec. 2483. Fictitious signature of officer of corporation.

§ 2483. If a fictitious or pretended signature, purporting to be the signature of an officer or agent of a corporation, is fraudulently affixed to any instrument or writing purporting to be a note, draft or evidence of debt issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery though no such person may ever have been an officer or agent of such corporation, or ever have existed.

### LEGISLATIVE ACTS RELATING TO CORPORATIONS, ENACTED SUBSEQUENTLY TO 1892.

1. To prohibit wrongful combinations against workmen.
2. For the protection of discharged employes, and to prevent blacklisting.
3. For the assessment and collection of revenue.
4. To prevent the use of money for political purposes by corporations.

#### Act 1.

AN ACT to prohibit wrongful combinations against workmen, and to punish the same.

Be it enacted by the legislature of the State of Florida:

Section 1. If two or more persons shall agree, conspire, combine, or confederate together for the purpose of preventing any person or persons from procuring work in any firm or corporation, or to cause the discharge of any person or persons from work in such firm or corporation, or if any person or persons shall verbally or by a written or printed communication, threaten any injury to the life, property or business of any person, for the purpose of procuring the discharge of any workman in any firm or corporation, or to prevent any person or persons from procuring work in such firm or corporation, such person or persons so combining shall be deemed guilty of a misdemeanor and upon conviction (thereof) shall be punished by fine not exceeding five hundred dollars each, or by imprisonment not exceeding one year.

(Approved May 31, 1893.)

#### Act 2.

AN ACT for the protection of discharged employes and to prevent blacklisting, and for other purposes.

Be it enacted by the legislature of the State of Florida:

Section 1. That if any railroad company or other corporation doing business in this

State, or any person, agent or employer of any such company or corporation after having discharged any employee from the service of any such company or corporation, shall attempt to prevent by word or writing, sign or other means, directly or indirectly, such discharged employee from obtaining employment with any other person, company or corporation, such person, agent, employer, company or corporation shall be guilty of a misdemeanor, and on conviction, shall be punished by a fine not exceeding five hundred dollars or less than one hundred dollars, and such person, agent, employer, company or corporation shall be liable in damages to such discharged person, to be recovered by civil action; but this section shall not be construed as prohibiting any person, agent, employer, company or corporation from giving in writing to any other person, company or corporation to whom such discharged person has applied for employment, a truthful statement of the reasons for such discharge; and shall furnish to such discharged employee on his application, to such address as may be given by such discharged employee, within ten days after such application made as aforesaid, a true copy of any such written statement.

§ 2. That if any railroad company or other corporation doing business in this State, shall authorize or permit, with its knowledge and consent, any of its officers, agents, employers or employes to commit either or any of the acts prohibited by this act (except as herein provided), such railroad company or corporation shall be liable in damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action.

§ 3. That it shall be the duty of any person, officer, agent, employer, company or corporation aforesaid, after having discharged

## Blacklisting: taxation — Acts of 1893, 1895.

any employe from the service of any such company or corporation, upon written demand by such employe, to furnish to him, within ten days from the application for the same, a full statement in writing of the cause or causes of his discharge, and if any such person, officer, agent, employer, company or corporation as aforesaid shall refuse within ten days after demand as herein provided to furnish such statement to such discharged employe, it shall be ever after unlawful for any such person, officer, agent, employer, company or corporation to furnish any statement of the cause of such discharge to any person or corporation or to in any way blacklist or to prevent such discharged employe from procuring employment elsewhere, subject to the penalties prescribed in section one of this act. And on the trial of any person, company or corporation, for a violation of the provisions of this act, any other person who may have authorized or permitted, with knowledge and consent as aforesaid, any such offense, or who may have participated in the same, shall be a competent witness, and be compelled to give evidence, and nothing then said by such witness shall at any time be received or given in evidence against him in any prosecution against the said witness, except on an indictment for perjury in any matter to which he may have testified; and on the trial of any such person for any violation of this act, the prosecution shall have the authority and process of the court trying the case to compel the production in court, to be used in evidence in the case, the books and papers of any such person, company or corporation, and a failure to produce the same, after such reasonable notice as the court may in each case provide, shall be in contempt of court, and punishable as such against the custodian or person, company or corporation having the control or in charge of such books and papers, who shall fail to produce the same: Provided, That such written cause of the discharge, when so made as aforesaid, at the request of such discharged employe shall never be used as the cause for an action for slander or for libel, either civil or criminal, against the person or authority furnishing the same.

§ 4. That it shall be the duty of any person, company or corporation, who has received any request or notice in writing, sign, word or otherwise, from any other person, company or corporation, preventing or attempting to prevent the employment of any person discharged from the service of either of the latter, on demand of such discharged employe, to furnish to such employe within ten days after such demand, a true statement of the nature of such request or notice, and if in writing, a copy of the same, and if a sign, the interpretation thereof, with the name of the person, company or corporation furnishing the same, with the place of business of the person or authority fur-

nishing the same; and a violation of this section shall subject the offender to all the penalties, civil and criminal, provided by the foregoing sections of this act.

§ 5. That the provisions of this act shall apply to and prevent, under all the penalties aforesaid, railroad companies or corporations under the same general management and control but having separate divisions, superintendents or master-mechanics, master-machinists or similar officers, for separate or different lines, their officers, agents and employes, from preventing or attempting to prevent the employment of any such discharged person by any other separate division, or officer or agent or employer of any such separate railroad line or lines.

§ 6. That all laws or parts of laws in conflict with this act be and, the same are hereby repealed.

§ 7. That this act shall take effect immediately upon its passage and approval by the governor.

(Approved, June 10, 1893.)

## Act 3.

## AN ACT for the assessment and collection of revenue.

Be it enacted by the legislature of the State of Florida:

Section 1. That all property, real and personal, in this State, not hereby expressly exempt therefrom, shall be subject to taxation in the manner provided by law.

§ 3. The terms personal property and personal estate, as used in this chapter, shall have the same meaning, and shall, for the purpose of taxation, be construed to include \* \* \* all public stocks or shares in all incorporated or unincorporated companies.

§ 8. The owner or holder of stock in any incorporated company, firm or firms, doing business under corporate names; which is taxed on its capital stock, shall not be taxed as an individual for such stock; Provided, That such stock is returned for assessment by such company; Provided, That this section shall not apply when the property of the incorporated companies is in this State, and taxes are paid on the same. \* \* \*

§ 69. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

(Approved, June 1, 1895.)

See Const., art. XVI, § 16. Stock is personal property. § 2130. See §§ 2133, 2134. Transfer to avoid taxation. § 2135.

## Act 4.

## AN ACT to prevent the use of money for political purposes by corporations.

Be it enacted by the legislature of the State of Florida:

Section 1. No foreign or non-resident corporation or corporation organized under the

## Crimes against franchise — Act of 1897.

laws of the United States, doing business in this State, nor any domestic corporation, shall pay or contribute, or offer, consent or agree to pay or contribute, directly or indirectly, any money, property or thing of value to any political party, organization, committee or individual for any political purpose whatsoever, or for the purpose of influencing legislation of any kind, or to promote or defeat the candidacy of any person for nomination, appointment or election to any political office.

§ 2. Any officer, employe, agent or attorney or other representative of any corporation, acting for and in behalf of such corporation, who shall violate this act shall be punished upon conviction by a fine of not less than one thousand, nor more than ten thousand dollars, or by imprisonment in the State prison for a period of not less than two nor more than five years, or by both such fine and imprisonment in the discretion of the court or judge before whom such conviction is had, and the corporation, if a domestic corporation, is dissolved, if after a proper proceeding upon quo warranto, in either the circuit or supreme court of the

State, to be prosecuted by the attorney-general of the State, the court shall fine and give judgment that section one of this act has been violated as charged, and if a foreign or non-resident corporation, its right to do business in this State ceases.

§ 3. The violation of this act by any officer, employe, agent, attorney or other representative of a corporation, shall be prima facie evidence that such officer, employe, agent, attorney or other representative of such corporation is acting for and in behalf of such corporation.

§ 4. Any person or persons who shall aid, abet, or advise a violation of this act shall be guilty of a felony, and upon conviction shall be punished as in section one of this act.

§ 5. Violations of this act shall be prosecuted in the county where such payment or contribution is made.

§ 6. All laws and parts of laws in conflict with this act be and the same are hereby repealed.

§ 7. This act shall take effect immediately upon its approval by the governor.

(Approved June 2, 1897.)

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GEORGIA.

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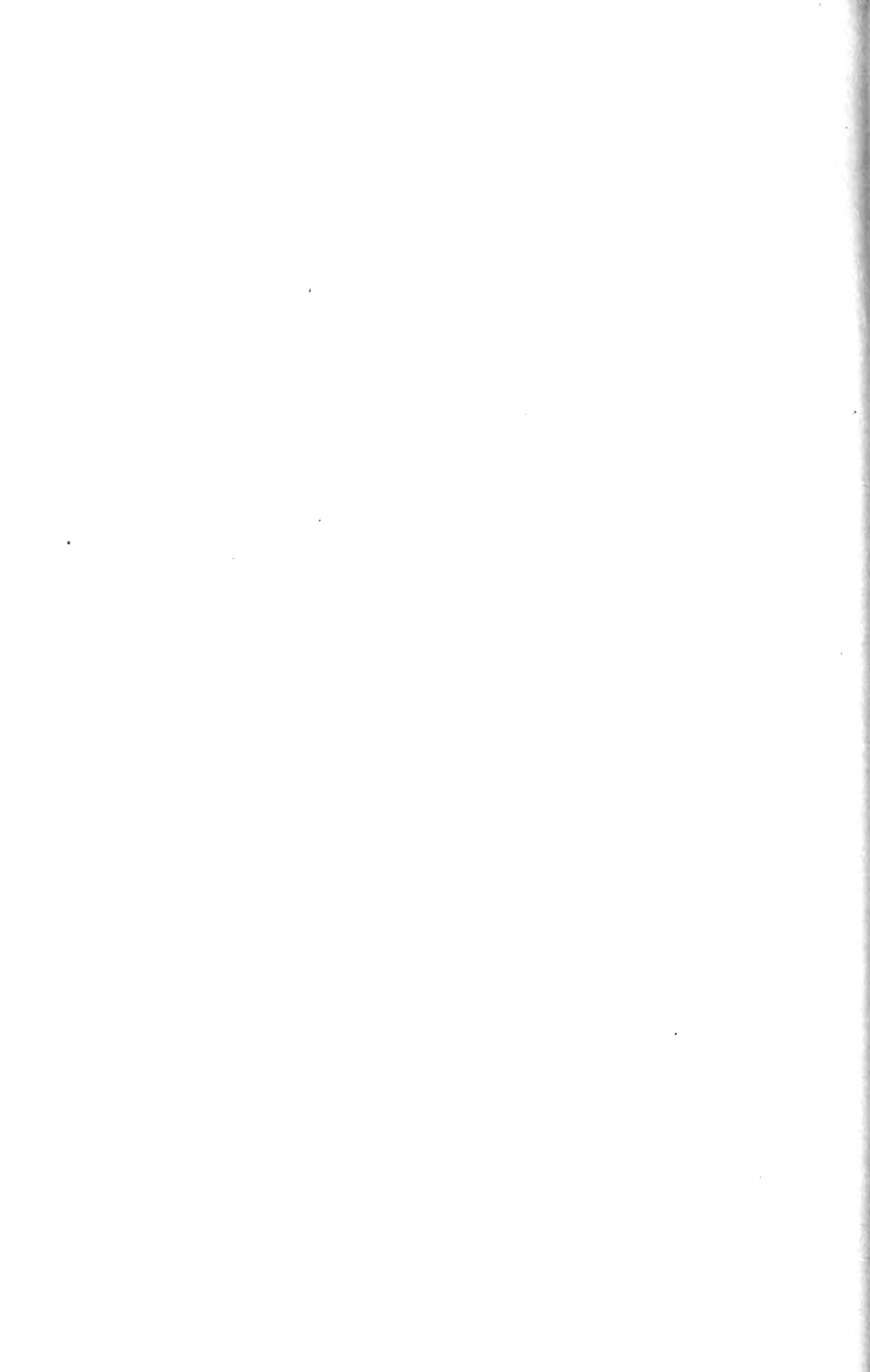
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# GEORGIA.

## CONSTITUTION OF GEORGIA—1877.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I, SECTION III.

##### Bill of Rights.

- Par. 2. Laws impairing obligations of contracts, or making irrevocable grants or privileges prohibited.
3. No grants or special privileges shall be revoked, except, etc.

#### ARTICLE III, SECTION VII.

##### Legislative Department.

- Par. 18. General assembly shall not grant corporate powers, but shall prescribe manner in which courts shall grant them.
20. Street railways shall not be constructed without consent of authorities.

#### ARTICLE IV, SECTION II.

##### Power of the General Assembly over Taxation.

- Par. 1. General assembly may regulate railroad freights and tariffs.
2. Right of eminent domain, or police powers of the State shall never be abridged.
3. General assembly shall not remit forfeiture of charter of existing corporations except upon certain conditions.
4. One corporation may not buy stock in another to lessen competition.
5. Railroad company not to deceive public as to rates.
6. No provision in this article shall be deemed to impair obligation of any contract.
7. Provisions of this article shall be enforced.

#### ARTICLE VII, SECTION II.

##### Taxation.

- Par. 5. Power to tax corporate property shall not be surrendered or suspended.

#### SECTION V.

- Par. 1. State shall not become a stockholder in, or loan its credit to any corporation.

#### ARTICLE I, SECTION III.

Par. II. No bill of attainder, ex post facto law, retroactive law, or law impairing the obligation of contracts, or making irrevocable grants of special privileges or immunities, shall be passed.

See Const., art. I, par. 3; art. IV, par. 6; art. VII, par. 5; Code, § 1682 et seq.

[A private corporation is a contract between the government and corporators, and rights and privileges conferred by charter cannot be repealed or impaired by legislature without consent or default of corporation. *Young v. Harrisons*, 6 Ga. 130.]

Where an act of incorporation is passed, making directors personally liable for certain acts, if committed, this charter is not a contract, but it is quasi ex contractu; and, upon commission of these acts, an action quasi ex contractu is raised. *Banks v. Darden*, 18 Ga. 318.]

Original contract between stockholders and corporation, as contained in charter, cannot be materially altered by an amended charter, without consent of stockholders. *May v. Railroad Co.*, 48 Ga. 109.]

Par. III. No grant of special privileges or immunities shall be revoked, except in such manner as to work no injustice to the corporators or creditors of the incorporation.

See § 1685.

[A private corporation cannot be deprived of its franchise except by judicial judgment upon a quo warranto. *State v. Mayor*, 5 Ga. 250.]

#### ARTICLE III, SECTION VII.

Par. XVIII. The general assembly shall have no power to grant corporate powers and privileges to private companies, except banking, insurance, railroad, canal, navigation, express and telegraph companies; \* \* \* but it shall prescribe by law the manner in which such powers shall be exercised by the courts.

See § 1674 et seq.

[An unconstitutional act, although void as a law, may operate as notice, not only to the corporation who accept of it, but the third persons who act upon it. *Robinson v. Bank*, 18 Ga. 65.]

Par. XX. The general assembly shall not authorize the construction of any street passenger railway within the limits of any incorporated town or city, without the consent of the corporate authorities.

#### ARTICLE IV, SECTION II.

Par. I. The power and authority of regulating railroad freights and passenger tariffs, preventing unjust discriminations, and requiring reasonable and just rates of freight

and passenger tariffs, are hereby conferred upon the general assembly, whose duty it shall be to pass laws, from time to time, to regulate freight and passenger tariffs, to prohibit unjust discriminations on the various railroads of this State, and to prohibit said roads from charging other than just and reasonable rates, and enforce the same by adequate penalties.

Par. II. The exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the general assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as property of individuals; and the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well-being of the State.

Par. III. The general assembly shall not remit the forfeiture of the charter of any corporation, now existing, nor alter or amend the same, nor pass any other general or special law for the benefit of said corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution; and every amendment of any charter of any corporation in this State, or any special law for its benefit, accepted thereby, shall operate as a novation of said charter and shall bring the same under the provisions of this Constitution: Provided, That this section shall not extend to any amendment for the purpose of allowing any existing road to take stock in or aid in the building of any branch road.

See § 1682.

Par. IV. The general assembly of this State shall have no power to authorize any

corporation to buy shares, or stock, in any other corporation in this State, or elsewhere, or to make any contract, or agreement whatever, with any such corporation, which may have the effect, or be intended to have the effect, to defeat or lessen competition in their respective businesses, or to encourage monopoly; and all such contracts and agreements shall be illegal and void.

Par. V. No railroad company shall give, or pay, any rebate, or bonus in the nature thereof, directly or indirectly, or do any act to mislead or deceive the public as to the real rates charged or received for freights or passage; and any such payments shall be illegal and void, and these prohibitions shall be enforced by suitable penalties.

Par. VI. No provision of this article shall be deemed, held, or taken to impair the obligation of any contract heretofore made by the State of Georgia.

See Const., art. I, paragraphs 2, 3.

Par. VII. The general assembly shall enforce the provisions of this article by appropriate legislation.

## ARTICLE VII, SECTION II.

Par. V. The power to tax corporations and corporate property, shall not be surrendered or suspended by any contract or grant to which the State shall be a party.

Taxation of corporations, see § 799 et seq.

## SECTION V.

Par. I. The credit of the State shall not be pledged or loaned to any individual, company, corporation or association, and the State shall not become a joint owner or stockholder in any company, association or corporation.

# REVISED CODE OF GEORGIA—1882.

## Part First. Political and Public Organization of the State.

### TITLE VIII. PUBLIC REVENUE.

#### CHAPTER I.

#### Taxation by the State.

##### ARTICLE II.

Sec. 799. Taxable property, what.

802. Moneyed and stock corporations liable to taxation.

§ 799. All real and personal estate, whether owned by individuals or corporations, resident or non-resident, are liable to taxation, unless especially exempted.

[License tax on foreign corporations. Ins. Co. v. City, 50 Ga. 530.]

§ 802. \* \* \* All moneyed or stock corporations, unless exempted or differently provided for in their charters, are liable to taxation upon such capital stock as other property.

##### ARTICLE III.

Sec. 816. Tax on railroads and other corporations.

§ 816. The several railroads and other incorporated or unincorporated companies of every kind, except banks which are not exempt by their charter otherwise, or for which there is not a different method of taxation specially prescribed, pay the same rate per cent. upon the whole amount of their capital stock paid in as is levied on other capital, together with the same rate per cent. upon their net annual profits; (Provided, That this section shall be not so construed as to include loan and building associations, but the same are hereby declared exempt from taxation upon their capital stock and net annual profits.)

[What is capital stock liable to taxation. *Hightower v. Thornton*, 8 Ga. 486. Tax to be paid on whole amount of capital stock paid in, and not on market value thereof. *Wilson v. Factory*, 41 Ga. 388.]

##### ARTICLE IV.

Sec. 826. Returns of foreign companies to be made.

826d. Returns to be itemized.

826g. Existing penalties remain.

827. Other returns, to whom made.

§ 826. The returns of all banks, railroad, and insurance and express companies, and agents of foreign companies, authorized in this State, shall be made to the comptroller-general by the first day of May in each year, and the taxes thereof shall be paid to the State treasurer by the first day of October in each year.

§ 826d. Whenever corporations, companies, persons, agencies, or institutions, are required by law to make returns of property,

or gross receipts, or business, or income, gross, annual, net, or any other kind or any other return, to the comptroller-general, for taxation, such return shall contain an itemized statement of property, each class or species to be separately named and valued, or an itemized account of gross receipts, or business, or income, as above defined, or other matters required to be returned, and in case of net income only, an itemized account of gross receipts and expenditures, to show how the income returned is ascertained, and such returns shall be carefully scrutinized by the comptroller-general, and if in his judgment the property embraced therein is returned below its value, he shall assess the value, within sixty days thereafter, from any information he can obtain, and if he shall find a return of gross receipts, or business, or income, as above defined, or other matters required to be returned as aforesaid, below the true amount, or false in any particular, or in anywise contrary to law, he shall correct the same and assess the true amount, from the best information at his command, within sixty days. In all cases of assessment, or of correction of returns, as herein provided, the officer or person making such returns shall receive notice and shall have the privilege, within twenty days after such notice, to refer the question of true value or amount, as the case may be, to arbitrators—one chosen by himself, and one chosen by the comptroller-general—with power to choose an umpire in case of disagreement, and their award shall be final.

§ 826g. Nothing in the three preceding sections shall alter or affect the penalties now provided by law against defaulting or delinquent corporations, companies, persons, or institutions, referred to therein, or to alter or affect the mode of enforcement of such penalties, now provided by law.

§ 827. All other companies or persons taxed shall make their returns to the receiver of the respective counties where the persons reside or the office of the company is located, except in cases of mining companies. \* \* \*

##### ARTICLE V.

Sec. 876. Defaulting corporations.

877. Delinquent corporations, penalty.

878. Penalty where none is fixed.

882. Executions against corporations, how directed.

901. Defaulting companies, etc.

§ 876. If any corporation, company, person, agency or institution, who are required to make their returns to the comptroller-general, shall fail to return the taxable property or specifics, or pay annually the taxes

for which they are liable to the State treasury, the comptroller-general shall issue against them an execution for the amount of taxes due, according to law, together with the costs and penalties.

[Section cited. *Railroad Co. v. Goldsmith*, 62 Ga. 463.]

§ 877. The penalty against all such corporations shall be the forfeiture of their charters. And if not chartered by this State, then the immediate suspension of their business therein.

§ 878. The penalty or default tax on banks, railroads and other corporations, where there is no special provision, shall be three times the amount of their lawful tax.

§ 882. The executions issued by the comptroller-general against any bank or other company shall be directed to all and singular the sheriffs and other lawful officers of this State, with directions to levy the same on the property of the corporation or company, with power to issue and serve garnishments upon the debtors of the corporation.

§ 901. Any incorporated or other company making default, shall be taxed by the collector as such defaulters are by the comptroller-general.

## TITLE XVII. REGULATIONS OF TRADE AND COMMERCE.

### CHAPTER I.

#### Banks and Banking.

##### ARTICLE IV.

Sec. 1496. Transferrer of stock, exempt from individual liability, when.

§ 1496. (As amended December 12, 1892.) When a stockholder in any bank or other corporation is individually liable under the charter and shall transfer his stock, he shall be exempt from such liability unless he receives written notice from a creditor within six months after such transfer of his intention to hold him liable: Provided, he shall within ten days thereafter cause notice of such transfer to be published once a week for four weeks in the newspaper which publishes the sheriff's sales of the county in which such corporation shall keep its principal office.

[Transfers of stock made void by charter if made within six months previous to failure of corporation liability. *Lumpkin v. Jones*, 1 Ga. 27.]

The personal liability of a corporate stockholder for debts of corporation continues until the stockholder has sold and transferred his stock and given notice thereof under the Code. *Brobston v. Downing*, 22 S. E. Rep. 277.

With or without a clause in charter restraining personal statutory liability of stockholders to amount of stock at its par value at the time debt in question was created, liability exists and continues for any debt incurred by the corporation at any time until stockholder who claims to be exempt by reason of having sold and transferred his stock before debt was created has given notice of such sale conformably to section 1496 of the Code. *Brobston v. Downing*, 95 Ga. 505; s. c., 22 S. E. Rep. 277.

Where personal statutory liability of stockholders is to be apportioned amongst all agreeing to the relative amount of stock severally by each, and where corporation is insolvent and has no assets applicable to payment of its unsecured creditors, one or more of these creditors may bring suit, in behalf of those of others who may choose to come in and be made parties, against all the stockholders and enforce their statutory liability and apportion the amount which each should contribute to discharge the claims of the various creditors. *Brobston v. Downing*, 95 Ga. 505; s. c., 22 S. E. Rep. 277.

Where it was stipulated in original contract of subscription, that it was "to be binding upon each party hereto when \$50,000 has been bona fide subscribed, and not before," and the subscriptions actually amount to less than that amount, none of the subscriptions were legally bound to pay. *Branch v. Augusta Glass Works*, 95 Ga. 573; s. c., 23 S. E. Rep. 128.

Creditors of an insolvent corporation, the directors of which, having full control of its affairs, have misappropriated its assets so as to put the same beyond reach of these creditors, may unite in an equitable petition for purpose of subjecting these creditors to individual liability because of said misappropriation. *Ellis v. Pullman*, 95 Ga. 445; s. c., 22 S. E. Rep. 568.

Where stock of an incorporated company is pledged by the owner as collateral security for payment of a debt, the pledgee is, as a general rule, entitled to collect and receive the dividends thereon unless this right is reserved by pledgor at the time pledge is made. *Guarantee Co. v. East Rome*, 96 Ga. 511; s. c., 23 S. E. Rep. 503.

Where president, secretary and treasurer actually know that certain shares of stock therein have been transferred by the person in whose name the stock stands on the company's books, to another, such knowledge is notice to the corporation itself. *Guarantee Co. v. East Rome*, 96 Ga. 511; s. c., 23 S. E. Rep. 503.

In the absence of express statutory authority the stock of one corporation cannot be consolidated with that of another, against objection of a majority of stockholders in their corporation. *Tompkins v. Compton*, 21 S. E. Rep. 79.

Where corporation has authority to increase its capital from \$10,000 to \$50,000, and it only increases it to \$15,000, which amount was fully paid up, and it has appropriated all of its property for its debts, there are no unpaid subscriptions which the stockholders are liable for. *Hale v. Iron Co.*, 22 S. E. Rep. 217.

Calls for payment of subscriptions which are payable "as the directors may direct," cannot be made by mere street conversation between president and directors of corporation, in which they "agree" that he may call in the subscriptions as needed. Such calls must be made by corporate action on part of directors. *Branch v. Augusta Glass Works*, 95 Ga. 573; s. c., 23 S. E. Rep. 128.

## Part Second. The Civil Code.

### TITLE I. OF PERSONS.

#### CHAPTER I.

#### Rights and Status of Persons.

##### ARTICLE IV. OF CORPORATIONS GENERALLY.

#### Section I.

#### Their Nature and Kinds.

Sec. 1670. Corporation defined.

1671. Public or private.

1672. Public.

1673. Private.

§ 1670. A corporation is an artificial person created by law for specific purposes, the limit of whose existence, powers and lia-

bilities is fixed by the act of incorporation, usually called its charter.

[Corporation defined. *Frederick v. Council*, 5 Ga. 561. Possesses only those properties conferred by charter, either expressly or as incidental to its very existence. *Id.* Is embraced in a statute under designation of "person," unless expressly excepted or excluded by necessary implication. *Railroad v. Paulk*, 24 Ga. 356. Is not a "citizen." *Manganese Co. v. Ward*, 73 Ga. 491. Entity not affected by entire change of personnel of officers and members. *Mathis v. Morgan*, 72 Ga. 517. Not a "person" in law until after grant of its charter. *Bartram v. Mfg. Co.*, 69 Ga. 751.]

§ 1671. Corporations are either public or private.

§ 1672. A public corporation is one having for its object the administration of a portion of the powers of government, delegated to it for that purpose — such are municipal corporations.

§ 1673. All others are private, whether the object of incorporation be for public convenience or individual profit, and whether the purpose be, in its nature, civil, religious or educational.

[See *R. & B. Co. v. State*, 54 Ga. 404.]

## Section II.

### Their Creation.

Sec. 1674. By whom created.  
1675. Foreign corporations.  
1675a. Foreign corporations hold lands, how.  
1676. Organization under order of court.

§ 1674. The power to create corporations in this State vests in the general assembly, and the courts, by whom all charters must be granted.

See Const., art. III. par. 18; Act 4, at p. 24.

[Grants of exclusive privileges to corporations are to be strictly construed, and if terms of grant are ambiguous, ambiguity must operate in favor of public. *McCord v. Burroughs*, 9 Ga. 213; *R. R. Co. v. R. R. Co.*, 49 Ga. 151; *R. R. Co. v. Smith*, 70 Ga. 604.

Corporations chartered in two States, may for some purposes be recorded as one entire entity. *R. R. Co. v. Hammond*, 58 Ga. 523.

General assembly cannot constitutionally incorporate three corporations by one law. *King v. Banks*, 61 Ga. 20.

Consolidation illegal, not consummated; notes given in lieu of delivered stock in consolidated company, not collectible. *Tompkins v. Compton*, 93 Ga. 520; s. c., 21 S. E. Rep. 79.

Charter fundamentally changed by legislature without consent of previous subscribers of stock, releases it. *Academy v. Flanders*, 75 Ga. 15; *Snook v. Imp. Co.*, 83 Ga. 62; s. c., 9 S. E. Rep. 1104. Whether change is fundamental is for decision by court. *Id.* Railroad terminus changed, is fundamental. *Id.*

Amendment, if repugnant to original charter, repeals the charter if accepted. *R. R. Co. v. Goldsmith*, 62 Ga. 463.

Not competent for general assembly to enact law creating three separate and distinct corporations, or reviving by name three charters which had become obsolete. *Ex parte Conner*, 51 Ga. 571; *King v. Banks*, 61 Ga. 20; *Howell v. State*, 71 Ga. 229.

Charter of private corporation is a contract between State and corporation; and terms of such contract are to be looked for in body of instrument, not in title or caption. *Goldsmith v. R. R. Co.*, 62 Ga. 473; *Same v. Same*, *Id.* 485.

Charter of bank is a public law, and courts will take judicial cognizance thereof. *Terry v. Bank*, 66 Ga. 177.

Charter passed by legislature is a public law. *Gunn v. R. R. Co.*, 74 Ga. 500. Legislative power to create corporation. *Bridge Co. v. Wood*, 14 Ga. 80.]

§ 1675. (As amended December 9, 1893.) Corporations created by other States or foreign governments, are recognized in our courts only by comity, and so long as the same comity is extended in their courts to corporations created by this State. But no foreign corporation shall exercise within this State any corporate powers or privileges which by the Constitution or laws of Georgia are denied or prohibited to corporations created by this State, or the exercise of which is contrary to the public policy of this State, anything in the charter or corporate powers of the said foreign corporation to the contrary notwithstanding. Whenever any foreign corporation shall exercise or attempt to exercise within this State any corporate power or privilege denied or prohibited to corporations created by this State, by the Constitution or laws of this State, or contrary to the public policy of this State, it shall be the duty of the courts to declare said corporate powers or privileges invalid and of no force or effect within this State, and to restrain or prohibit by appropriate process, order or judgment, the exercise of said corporate powers or privileges by said foreign corporation at the instance of any party at interest, or at the instance of the attorney-general, when the latter shall be directed by the governor to proceed to that end in the name of the State.

[A corporation can have no legal existence out of the sovereignty by which it is created; but its existence may be recognized in another State, and it may there be contracted with. *U. B. R. R. Co. v. E. T. & G. R. R. Co.*, 14 Ga. 327. Right to sue controlled by comity. *Society v. Gattrell*, 23 Ga. 448.

Attachment will lie against a foreign corporation, even though it be not doing business here. *Wilson v. Danforth*, 47 Ga. 676.

Although corporations, as such, can do no corporate act out of limits of State granting its charter, yet its agents and officers may bind it by contracts and engagements made in other States, and minutes of board of directors may be used as evidence, though the meetings appear to have been held out of State chartering the corporation. *Milne v. King*, 45 Ga. 34.

Foreign corporation transacting business in this State may be garnished for a debt which may be owed anywhere in this State where suit for such a debt could be brought. *R. R. Co. v. Tyson*, 48 Ga. 351.

Foreign corporation becoming indebted under contracts made in Georgia, is liable to suit upon such contracts in this State, though at time of institution no business was being done by company, it having no place of business in the State of its incorporation. *Bank v. Mfg. Co.*, 55 Ga. 38.

Courts of this State have no jurisdiction of suit in personam against foreign corporation, unless contract was made in Georgia, or Georgia agent was connected therewith. Remedy is by attachment. *Bawknicht v. Ins. Co.*, 55 Ga. 194. Counsel for foreign corporation not competent to verify amendments to exceptions, when. *Ins. Co. v. Gray*, 61 Ga. 515.

Subscriber to stock of foreign corporation, whose subscription was induced by fraudulent representations, may repudiate contract, and proceed by attachment as for money had and received. *Ins. Co. v. Turner*, 61 Ga. 561.

Affidavit for attachment need not disclose that defendant is a corporation. Residence beyond this State implies that debtor is not a domestic corporation. *R. R. Co. v. Plant*, 58 Ga. 167.

A Georgia court has no jurisdiction to dissolve a foreign corporation. *Dodge v. Manganese Co.*, 69 Ga. 665.

Foreign company buying domestic railroad, becomes domestic corporation, when. *Angier v. R. R. Co.*, 74 Ga. 634.

Foreign corporation subject to attachment in this State. *R. R. Co. v. Sav. Inst.*, 64 Ga. 18. Provision making it liable to suit, cumulative. *Id.*

Suit in personam cannot be maintained against a foreign corporation on contract made out of the State. Remedy is in rem, by attachment or garnishment. *Bawknicht v. Ins. Co.*, 55 Ga. 194; *Min. Co. v. Purdy*, 65 *Id.* 499. Mechanics' lien against, enforced here. *Id.*

Foreign railroad company with principal office in Fulton county, by statute, suable for injury in other county. *Williams v. Ry. Co.*, 90 Ga. 519.

Court of Georgia has no jurisdiction over nonresident foreign corporation; a resident agent to audit and pay claims does not alter case. *Schmidlapp v. Ins. Co.*, 71 Ga. 246.

Judgment constraining charter in State of creation, followed here. *Clark v. Turner*, 73 Ga. 1.

One giving a deed to a foreign corporation under a power of sale to secure a loan, held estopped to deny the right of the corporation to exercise the power. *Ray v. Home, etc., Co.*, 26 S. E. Rep. 734.]

§ 1675a. (As amended December 13, 1895.) Any foreign corporation or corporations incorporated by the laws of any other State, and claiming to own lands in Georgia in quantity amounting to as much as five thousand acres, shall be incorporated by the laws of Georgia within twelve months after February twenty-eighth, eighteen hundred and seventy-seven, and on their failing to do so, the State of Georgia will not consent to the said corporation owning the said lands so located in her territory, and any foreign corporation or corporations hereafter incorporated by the laws of other States, who shall claim to own lands in the State of Georgia in quantity amounting to five thousand acres or upwards, shall become incorporated by the laws of the State of Georgia, and in default thereof, Georgia will not consent that said foreign corporation or corporations incorporated by the laws of another State shall own said lands in her territory; and no foreign corporation or corporations incorporated by the laws of another State shall own more than five thousand acres of land except upon the condition aforesaid of becoming a corporation under the laws of Georgia; Provided, That this section shall not apply to any foreign corporation, or any corporation incorporated by the laws of any other State engaged in the business of lending money on

real estate security, nor to any such corporation which holding a lien upon real estate to secure the payment of any debt, when said corporation, in order to prevent loss, is compelled to become the purchaser of lands covered by deed or mortgage to secure a loan; Provided, however, That the benefits and privileges of the foregoing proviso shall not apply to any foreign corporation which does or may lend money in this State at a greater rate of interest than eight per cent. per annum. In estimating the amount of interest charged, there shall be included any and all commissions or fees which may be paid to said company or its duly authorized agents.

[On bill by foreign corporation to recover real estate, charter of such foreign corporation must show right to hold. *Cotton Gin Co. v. Barrett*, 66 Ga. 526.

State alone can make the question as to right of such corporation to hold said land. *Mortg. Co. v. Tennille*, 87 Ga. 28; s. c., 13 S. E. Rep. 158.]

§ 1676. A private corporation, for any purpose whatever, except banking or insurance, may be created in this State by complying with the following provisions:

1. (As amended September 8, 1891.) The persons desiring the charter shall file in the office of the clerk of the superior court of the county in which they desire to transact business, a petition or declaration, specifying the objects of their association, and the particular business they propose to carry on, together with their corporate name, and the amount of capital to be employed by them actually paid in, and their place of doing business, and the time not exceeding twenty years, for which they desire to be incorporated: which petition or declaration shall be published once a week for four weeks in the nearest public gazette to the point where such business is located, before said court shall pass an order declaring said application granted. After the granting by the court of the order of incorporation, the petition and said order shall be recorded together by said clerk in a book to be kept for that purpose, and to be known as "the Record of Superior Court Charters," and which shall be kept appropriately indexed by said clerk; but this shall not dispense with the recording of the order of incorporation upon the minutes of the court, also as a part of the proceedings of the court. \* \* \*

See Act 4, at p. 24.

[Applicants must specify business to be carried on, place of business and amount of capital to be used. In re *Deveaux*, 54 Ga. 673.

Fraud in inducing one to join in organizing company, relievable against in equity. *Stewart v. Rutherford*, 74 Ga. 435. Corporation properly a party. *Id.* Insolvency of corporation need not be alleged, nor relief asked of stockholders. *Id.*

Injunction against procurement of charter, not granted. *Med. Col. v. Thompson*, 92 Ga. 564; s. c., 18 S. E. Rep. 430.



Fraud of corporation in obtaining its charter cannot be set up as a defense by its debtors. *Pattison v. B. & L. Assn.*, 63 Ga. 374.]

2. If, upon hearing such petition, the court shall be satisfied that the application is legitimately within the purview and intention of this Code, it shall pass an order declaring the said application granted, and the petitioners and their successors incorporated for and during a term not exceeding twenty years, with the privilege of renewal at the expiration of that time according to the provisions above set forth. A certified copy of this petition and order, under the seal of the court, shall be evidence of such incorporation in any court in this State.

Commissioners appointed by law to receive subscriptions to stock have discretion to determine what is a bona fide subscription. *Napier v. Poe*, 12 Ga. 170.

When petition to Superior Court to obtain charter failed to state fully objects of corporation, defect in petition held to be cured by court's specifying objects in granting its assent. *Redwine v. L. & B. Assn.*, 54 Ga. 474.

Purposes and objects of corporation, when sufficiently set forth in petition. *Van Pelt v. B. & L. Assn.*, 79 Ga. 439; s. c., 4 S. E. Rep. 501.

Power of courts to grant charter to corporations is legislative and not judicial. *Gaslight Co. v. West*, 75 Ga. 318. There is no provision authorizing anyone to appear and object to such grant of corporate powers, and order granting charter is reviewable. *Id.*

Estoppel to deny existence of corporation, as against creditors without notice, after charter obtained. *Stewart Co. v. Rau*, 92 Ga. 511; s. c., 17 S. E. Rep. 748.

Acceptance of charter presumed, if granted after being applied for. *City v. Gaslight Co.*, 71 Ga. 106.

Parties carrying on business as a corporation de facto, estopped from denying corporate character and name. *Ice Co. v. Porter*, 70 Ga. 637. Corporation de facto changed into one de jure liable for debts of first. *Id.*

One dealing with a corporation as such, estopped to deny corporate existence. *Bank v. Padgett*, 69 Ga. 159. And members of de facto corporation not liable as individuals or as partners. *Id.*

One corporation dealing with another is estopped to deny corporate existence of the other, when. *Imboden v. Min. Co.*, 70 Ga. 86.

Under Constitution of 1868, Superior Courts had no authority to incorporate manufacturing companies. *Kehler v. Mfg. Co.*, 55 Ga. 639.

3. No corporation created under this article shall commence to exercise the privileges conferred by the charter, until ten per cent. of the capital stock is paid in, and no charter shall have any force or effect for a longer period than two years, unless the incorporators, within that time, shall in good faith commence to exercise the powers granted by the act of incorporation; and, in case of the failure of said corporation, the stockholders shall be bound, in their private capacity, to any creditor of said corporation for the amount of stock subscribed for by him, until the said subscription is fully paid up, or until the stockholder shall have paid, out of his private property, debts of the said corporation to an amount equal to his unpaid subscription.

Relief from individual liability. See Act of 1894, p. 28; see § 3367 et seq.

[This clause not applicable to legislative charters. *City v. Gaslight Co.*, 70 Ga. 464. It is the amount of shares subscribed, and not the sums paid in, which constitutes the capital stock. *Lighttower v. Thornton*, 8 Ga. 486. A subscription for stock is a debt, which corporation may call in to satisfy creditor. *Id.* Right to have unpaid stock drawn in, to extinguish outstanding debts, is as clear and strong after as before dissolution. *Id.* Unpaid subscriptions are corporate property, which can be reached by creditors; and this right exists entirely independent of any statutory provision. *Id.* A court of equity will provide a remedy to enable creditors to appropriate this trust fund. *Id.*

Misrepresentations made by a company before incorporation cannot, after incorporation, be made ground of an action, by creditors of the corporation against stockholders. *Matthews v. Stanford*, 17 Ga. 543. Neither can fraudulent non-disclosures or concealments. *Id.* The action should be against the parties implicated. *Id.*

Where stockholder is made individually liable upon execution issued against corporation, he is entitled to the remedy by illegality, same as any other defendant in *li. fa.* *Force v. Leather Co.*, 22 Ga. 86.

Change in location of railroad, if consistent with original design and object of the enterprise, will not relieve stockholder from his subscription, though made without his consent. *Wilson v. R. R. Co.*, 33 Ga. 466.

Where no notice of call or assessment of stock is required to be given by the charter, such notice not essential. *Id.*

An issue or an offer to issue certificates of stock is not a condition precedent to right of recovery and subscription. *Fulgum v. R. R. Co.*, 44 Ga. 597; *R. R. Co. v. Ayres*, 56 *id.* 230.

Holders of preferred stock entitled to claim as creditors, when. *Totten v. Tison*, 54 Ga. 129. Suit for stock subscription; no defense that railroad company has been authorized by an action. *Mullins v. R. R. Co.*, 54 Ga. 580.

Subscriber to stock contracts with reference to charter; number of shares to be subscribed, or stock necessary to do contemplated business, constitutes important element. *R. R. Co. v. Sullivan*, *Same v. Amberg*, 57 Ga. 240. Release of subscriptions produces same practical result as failure to take amount subscribed by charter. *Id.* Nominal subscription, to fulfill letter and break spirit of contract, no compliance with charter. *Id.*

In suit to collect capital stock subscribed, evidence of value of that or any other stock, irrelevant. *R. R. Co. v. Ayres*, 56 Ga. 230.

Calls for subscription must be clearly proved, and recovery should be limited to aggregate amount of calls not met. *Id.*

Where subscriptions to be paid in property, burden is on corporation to show that such payment was equivalent to cash. *Hayden v. Cotton Factory*, 61 Ga. 233.

Directors having approved and accepted subscription, burden of showing that all such subscriptions were worthless or fraudulent is on party setting up such defense. *Hayden v. Cotton Factory*, 61 Ga. 233.

Number and qualification of directors, fixed by charter, essential to be adhered to to make calls valid; but payments under irregular calls show acquiescence. *R. R. Co. v. Vason*, 57 Ga. 314.

Conditions precedent to validity of calls must be shown, before recovery can be had. *Id.*

Forfeiture of stock for failure to meet calls, is satisfaction of debt; but mere threat to forfeit if not paid will not bar action. *Id.*

Member of chartered company bound by acts of company, when. *May v. R. R. Co.*, 48 Ga. 100.

Title of purchaser of stock complete when seller has given on the scrip authority to proper officer to transfer, and price has been paid. *Ross v. R. R. Co.*, 33 Ga. 544.

Capital stock not subscribed to minimum, and unpaid, but corporations organized, doing business, contract debts, etc.; liability to creditors. *Burns v. Beck*, 83 Ga. 471; s. c., 10 S. E. Rep. 121.

## Creation of corporations — Rev. Code, § 1676, subds. 4-7.

Amount of capital stock being in discretion of company, when once fixed by it conditional subscriptions not taken into the estimate. *Brand v. R. R. Co.*, 77 Ga. 506; s. c., 1 S. E. Rep. 255.

Subscriptions to stock beyond charter limit are void and not collectible. *Clark v. Turner*, 73 Ga. 1.

Failure to secure subscriptions to amount of minimum required by charter, or release of subscriptions below that amount, discharges subscriber. *Hendrix v. Academy*, 73 Ga. 438.

Where charter requires certain amount of stock to be subscribed and ten per cent. paid in before beginning business, these are conditions precedent, and business done before complying is ultra vires.

A subscriber on condition that others would purchase his shares at the end of three years on thirty days' notice, held not required to elect to keep the stock, or to give said notice, immediately on the three years expiring. *Rogers v. Burr*, 25 S. E. Rep. 359.

A subscriber on condition of a guarantee of dividends for a certain term held, entitled to recover on the guarantee, though he did not satisfy the guarantors of the failure to pay dividends until the expiration of said term. *Id.*

Evidence held to show a contract between plaintiff and the promoters of a corporation for services in obtaining subscribers to stock. *Pratt v. Finkle*, 25 S. E. Rep. 941.

A receiver of a corporation may deliver stock to a subscriber on payment of the subscription. *Chattanooga R. & C. R. Co. v. Warthen*, 25 S. E. Rep. 988.

A sale of a subscription to a company in which the subscriber was not entitled to receive stock on payment, held not to avoid the subscription where the sale was rescinded. *Id.*

Material amendments of the charter, which were not accepted, held to avoid a subscription. *Id.* Parol evidence is not admissible to show that a subscription to stock was made upon an oral condition agreed to before the subscription was signed. *Id.*

Where the subscription was assigned to another corporation, held that the subscriber was entitled to receive stock in the successor company. *Id.*

The assignee of a subscription to railroad stock may enforce payment in any case in which the company could do so. *Id.*

Holder of stock as collateral, not vested with powers and privilege of a stockholder. *Bank v. Sibley*, 71 Ga. 726.

Conditions precedent in note given for installments of stock subscribed, discussed. *Johnson v. R. R. Co.*, 81 Ga. 725; s. c., 8 S. E. Rep. 531.

Conditional subscriptions not estimated in reckoning capital stock subscribed, when. *Brand v. R. R. Co.*, 77 Ga. 512; s. c., 1 S. E. Rep. 255.

Where some subscriptions have been made upon a condition precedent plaintiff must show that conditions have been either complied with or waived. *Id.*

Future creditors cannot call on stockholders who, by resolution, have reduced subscriptions below charter minimum, for more than difference, unless credit was given on good faith of original amount. *Hill v. Silvey*, 81 Ga. 509; s. c., 8 S. E. Rep. 808.

Subscriber not estopped by ratification from setting up that company began business in violation of law. *Academy v. Flanders*, 75 Ga. 14.

Fraud in inducing subscriptions, equity proper form for redress. *Bank v. Bartlett*, 71 Ga. 798. But subscriber cannot avoid his contract, if, after notice of the fraud, he has derived any benefit of his shares or in any manner acted as a shareholder. *Id.*

Subscription induced by fraud, binding where debts subsequently contracted. *Turner v. Ins. Co.*, 65 Ga. 649.

Transfer of stock and receiving back assets, impose no liability, when. *Morgan v. Brower*, 77 Ga. 634.

Fraud between corporation and corporator does not affect creditors. *Howard v. Glenn*, 85 Ga. 238; s. c., 11 S. E. Rep. 610.

Release of some stockholders no release to another unless his liability increase thereby. *Id.*

Stockholders relieved of liability for indorsing note of corporation, by foreclosure of mortgage of corporate property, whether liable to other creditors for dilution of assets. *Wehl v. Atla. Co.*, 89 Ga. 297; s. c., 15 S. E. Rep. 282.

While corporation formed under provisions of above section may not begin and transact business for which it was chartered until 10 per cent. of the capital stock had been paid in, it may, before it has been done, organize and collect subscriptions to its actual stock. *Branch v. Augusta Glass Co.*, 95 Ga. 573; s. c., 23 S. E. Rep. 128.

4. The clerk of the court, for his services, shall receive the usual fees allowed for similar services in other cases.

Fees of secretary of State found in L. 1894, at p. 38.

5. Corporations thus created may exercise all corporate powers necessary to the purpose of their organization, but shall make no contract or purchase, or hold any property of any kind, except such as is necessary in legitimately carrying into effect such purpose, or for securing debts due to the company.

Powers of a corporation. § 1679.

6. (As amended Dec. 16, 1897.) The powers conferred in this section shall extend to the amendment and renewal of all charters contemplated in said section, with the jurisdiction of said courts, whether the original charter sought to be amended or renewed was originally granted by the general assembly of the State or by a superior court of this State.

[An act to extend charter of a corporation, by usage, included the terms or condition by which said extension is granted. *Robinson v. Bank*, 18 Ga. 65.]

7. (Enacted December 16, 1897.) The renewal of charters by the superior courts of this State under the powers conferred by this section, shall be granted by the said superior courts in advance of the expiration of such charters, but to take effect from the date of such expiration, upon the filing in the office of said superior court of a petition signed with the corporate name of the company whose charter is sought to be renewed, stating the name of the corporation, when incorporated, the date and manner of its original incorporation, and all amendments thereto, that it desires a renewal of its charter as set out in the original act of incorporation, and the amendments thereto, together with any further amendments which may be desired in the renewal of said charter; and shall file along with said petition a certified abstract from the minutes of the corporation showing that the application for renewal and amendment had been au-

thorized by proper corporate action, and shall in all other respects comply with the requirements of this section, so far as the same applies to the grant of incorporation for the company or association whose charter is sought to be renewed.

### Section III.

#### Powers and Liabilities of Corporations.

Sec. 1678. Continuance.

1679. Powers.

1680. Responsibilities for acts of officers.

§ 1678. Corporations have continuous succession during the time limited by their charter, notwithstanding the death of their members. Should any charter granted in future by the general assembly to a private corporation be silent as to its continuance, such charter shall expire at the end of thirty years from the date of its grant.

[Death of all members works a dissolution. § 1687. See *R. R. Co. v. R. R. Co.*, 49 Ga. 151. Section cited. *R. & B. Co. v. State*, 54 Ga. 404.]

§ 1679. All corporations have the right (1) to sue and be sued.

See § 3367 et seq.

[Clause in Constitution requiring all civil cases to be tried in county where defendant resides applies to corporations as well as natural persons. *Bank v. Gibson*, 11 Ga. 453.]

The legal and equitable rights of a corporation are to be measured by same standard in rendition of verdicts of juries as those of natural persons. *Green v. So. Ex. Co.*, 41 Ga. 515.

Corporations liable for libelous publication. *Mach. Co. v. Souder*, 58 Ga. 64. Acts of agent which will charge corporation therewith. *Id.*

In action on contract, corporation need not set out how or by what authority it was incorporated nor aver itself to be a corporation. *Wilson v. Mach. Co.*, 55 Ga. 672.

Stockholders, unless authorized by statute, are not allowed to plead and defend for corporation when suit is against it, and they are not parties on the record. *Blackman v. R. & B. Co.*, 58 Ga. 189.

Name of corporation is of its very essence, and a change of name in the *fi. fa.* from that by which it is sued, and judgment entered is a material variance. *Bradford v. W. L. Co.*, 58 Ga. 280.

Effect of change of name by act of legislature upon pending suit by the corporation. *W. L. Co. v. Bank*, 53 Ga. 30.

That plaintiff corporation owns majority of stock in defendant corporation does not affect rights nor preclude defense. *Bradford v. W. L. Co.*, 58 Ga. 280.

Stockholders cannot maintain bill for protection of corporate property, without alleging refusal of corporation to act in corporate name. *Ware v. Bazemore*, 58 Ga. 316.

Court of chancery has no authority to compel domestic corporation to go into foreign State and specifically contract. *R. R. Co. v. Hammond*, 58 Ga. 523.

Son of stockholder incompetent as juror in case of which corporation is party. *R. R. Co. v. Hart*, 60 Ga. 559.

Books of corporation produced on notice and read in part, how far evidence. *Vischer v. R. R. Co.*, 34 Ga. 536.

Books including stock-ledger admissible in suit between company and stockholder. *R. R. Co. v. Vason*, 57 Ga. 314.

Minutes of corporation touching contract, admissible in evidence, when. *Brower v. E. Rome Co.*, 84 Ga. 219; s. c., 10 S. E. Rep. 629.

Misnomer in name of corporation immaterial, when. *Imboden v. Min. Co.*, 70 Ga. 88.

Where corporation is sued by part of its name only, error may be corrected by amendment. *Johnson v. R. R. Co.*, 74 Ga. 337; *R. R. Co. v. Sullivan*, 14 id. 277; *R. R. Co. v. Rodgers*, 66 id. 251.

Where name of plaintiff imports a corporation, but it is not alleged that plaintiff is so, a judgment is not void for mere want of such allegation. *Academy v. Hardin*, 78 Ga. 29. Whether the name so imports, is for judicial determination. Rules for deciding. *Id.*

Court will take judicial notice of names of all companies chartered by legislature. *Jackson v. State*, 72 Ga. 28.

Too late, after verdict, to take exception on ground that declaration did not allege that defendant was a corporation. *Cribb v. Lumber Co.*, 82 Ga. 557; s. c., 9 S. E. Rep. 426.

Criminal negligence, corporation not guilty of, when. *Allen v. Factory*, 82 Ga. 76; s. c., 8 S. E. Rep. 68.

Subsequent creditors cannot sue for property lost by fraud, where corporation has waived or omitted to sue. *Morgan v. Brower*, 77 Ga. 635.

If property be damaged by illegal acts of corporation, president cannot mitigate damages by offer to buy property. *Mayor v. Harris*, 75 Ga. 702.

Possessory warrant to obtain corporate property, requisites of affidavit. *McEvoy v. Hussey*, 64 Ga. 314.

Where a corporation has a clear legal right, which has been violated by the corporation, and he has no other adequate legal remedy, he is entitled to relief by mandamus. *Waring v. Med. Soc.*, 38 Ga. 608.

No funds, and unprofitableness of franchise, no reason against mandamus. *Canal Co. v. Shuman*, 91 Ga. 400; s. c., 17 S. E. Rep. 937.

Plea of null tiel corporation will not lie, when. *Nutting v. Hill*, 71 Ga. 557.

Transactions between corporators, throwing light on work of corporation, admissible in evidence. *Imboden v. Min. Co.*, 70 Ga. 87.

Minority stockholders may have relief in equity for fraud, conspiracy or acts ultra vires, but right to relief may be forfeited through laches. *Alexander v. Searey*, 81 Ga. 536; s. c., 8 S. E. Rep. 630.

Where mortgage made by officers of corporation has been foreclosed, individual stockholder cannot interfere by injunction to restrain levy and sale under mortgage without showing sufficient reason why corporation itself is not party complainant. *Henry v. Elder*, 63 Ga. 347.

Injunction at instance of minority, to restrain policy of majority, not granted, when. *Lamar v. House*, 76 Ga. 640.

Mandamus will not lie to compel officers of bank to transfer stock from the vendor to a purchaser, except under judicial sale. *Bank v. Harrison*, 66 Ga. 606.

Sole shareholder may be indicted individually for injury to property by the corporation. *Castleberry v. State*, 62 Ga. 412.

If scrip representing stock be stolen, name of one forged, and stock sold and transferred on books, a bill will lie to compel issue of new stock and granting of dividends by company, or in default thereof, to compel purchasers to replace stock. *Blaisdell v. Bohr*, 68 Ga. 59.

Use and exercise of rights and privileges acquired or usurped from another corporation subjects user to its burden, including suit that could be maintained against it. *R. R. Co. v. Fulghum*, 87 Ga. 203; s. c., 13 S. E. Rep. 649.

Expiration of corporation not prevented by special law as to pending litigation only. *Logan v. R. R. Co.*, 87 Ga. 533; s. c., 13 S. E. Rep. 516.

Dissolved corporation cannot prosecute pending suit, when. *Van Pelt v. R. & L. Assn.*, 87 Ga. 370; s. c., 13 S. E. Rep. 574.

A conversion of property belonging to the corporation gives a stockholder no right to sue there-

for in his own name. *Steele Co. v. Laurens*, 24 S. E. Rep. 755.

A stockholder in a corporation cannot maintain an action against the directors for official misconduct, whereby the income of the corporation is decreased, without making other interested stockholders parties to the action. *Bethune v. Wells*, 21 S. E. Rep. 230.

A corporation is a necessary party to an action by a stockholder against the directors for misconduct in office. *Id.*

A trading corporation held liable as accommodation indorser on a note in the hands of a bona fide purchaser. *Jacobs Pharmacy Co. v. Southern B. & T. Co.*, 55 S. E. Rep. 171.

A corporation held not liable in garnishment to one of its salaried officers, where at no time, on striking a balance, there would have been anything due to the officers. *Bank v. Light & Water Co.*, 26 S. E. Rep. 473.]

(2.) To have and use a common seal.

(3.) To make by-laws, binding on their own members, not inconsistent with the laws of this State and of the United States.

See §§ 1680, 1990.

[Corporation can exercise no power over corporators, beyond those conferred by charter, except on condition of their agreement and consent. *Winter v. R. R. Co.*, 11 Ga. 438. When neither charter nor any general statute imposed on stockholders of a corporation a liability to pay its debts, such liability cannot be imposed by a by-law. *Reid v. Mfg. Co.*, 40 Ga. 98. If individual members have represented to public that they were so liable, they are bound, not as subscribers, but as individuals. *Id.* Officers of corporation accepting and serving under known by-laws are to be understood as accepting such by-laws. *Mfg. Co. v. Brown*, 58 Ga. 240. And a by-law which creates a lien on stock, for debts due the corporation, is binding as between the corporators. *Tuttle v. Walton*, 1 Ga. 43. But a by-law which infringes a statute is void. *Haywood v. Mayor*, 12 Ga. 405.]

(4.) To receive donations by gift or will.

(5.) To purchase and hold such property, real or personal, as is necessary to the purpose of their organization.

[Mortgage by stockholders, officers interested, effect of. *Holst v. Burrus*, 79 Ga. 111; s. c., 4 S. E. Rep. 108.

Purchasing property or engaging in business outside of charter, is ultra vires. *Reynolds v. Simpson*, 74 Ga. 454. Aliter, if to secure or collect debt in good faith. *Id.*

Stockholder under deed from company cannot set up a prescriptive title beyond what company might. *Moses v. Mfg. Co.*, 62 Ga. 455.

(6.) And to do all such acts as are necessary for the legitimate execution of this purpose,

[Directors, unless expressly restrained either by charter or by-laws, may exercise ordinary powers of a corporation. *Mtn. Co. v. King*, 45 Ga. 34.

Incidental powers of mining corporation. *Id.* Of corporation for manufacture of pig iron. *Iron Co. v. Jones*, 52 Ga. 56. Of lumber company. *Ellington v. Lumber Co.*, 93 Ga. 53; s. c., 19 S. E. Rep. 21.

Injunction asked by stockholders against action of company which they claimed to be ultra vires refused by chancellor. *Cozart v. R. & B. Co.*, 54 Ga. 379.

Allowing stockholders to pay up subscriptions before due in depreciating currency is ultra vires. *R. R. Co. v. Vason*, 57 Ga. 314.

Sawmill company, by express consent of stockholders and directors, when incidental and necessary to its business, may legally guarantee interest on railroad bonds. *Mercantile Co. v. Emp. Co.*, 91 Ga. 636; s. c., 18 S. E. Rep. 358.

A corporation cannot be a peddler. *Iron Co. v. Johnson*, 84 Ga. 754; s. c., 11 S. E. Rep. 233.

Railroad company to form partnership is ultra vires. *Gunn v. R. R. Co.*, 74 Ga. 509.

Powers of a corporation are limited by act of incorporation, and besides powers specially granted, it has those which are common to all corporations. Power to form partnership not one of those which is common to all. *Id.*

No corporation, whether private or public, can exercise any power not expressly conferred or necessarily implied to enable it to carry into effect purpose for which it was created. This is inseparable from the very definition of a corporation as given by section 1670. *Church v. City*, 76 Ga. 188; *Leverett v. Ry. Co.*, 96 id. 386; s. c., 24 S. E. Rep. 154.

Corporation has only the power conferred by its charter. *Singleton v. R. R. Co.*, 70 Ga. 464. And such powers are always to be strictly construed, and its obligations to be strictly performed, whether they may be due to State or to individuals. *Id.*

No remedy can be had for breach of contract which is ultra vires. *Hose Co. v. Philpot*, 53 Ga. 625.

Exclusive grants are to be strictly construed, and will not be extended further than their terms require. *R. R. Co. v. Augusta*, 96 Ga. 565; s. c., 23 S. E. Rep. 501.

Ultra vires could not be pleaded against a bona fide purchaser, in defense of a note given by the corporation for property it had no authority to buy, though it offered to rescind the sale when the offer was not made on the grounds of ultra vires. *Towers v. Inman*, 23 S. E. Rep. 418.

Where a railroad company, incorporated under general act, accepts amendments to its charter by a special act, and afterward, without objection of its stockholders, contracts with respect to powers conferred by special act, both corporation and stockholders are bound by such contract, whether special act be valid or not. *Johnson v. Trust Co.*, 21 S. E. Rep. 576.

Evidence examined, and held that the secretary of defendant corporation had authority to make and endorse notes in its corporate name. *Jacobs Pharmacy Co. v. Southern Banking & Trust Co.*, 25 S. E. Rep. 171.

One giving a deed to a foreign corporation under a power of sale to secure a loan, held estopped to deny the right of the corporation to exercise the power. *Ray v. Home, etc., Co.*, 26 S. E. Rep. 56.]

§ 1680. Every corporation acts through its officers, and is responsible for the acts of such officers in the sphere of their appropriate duties; and no corporation shall be relieved of its liability to third persons for the acts of its officers by reason of any by-law or other limitation upon the power of the officer, not known to such third person.

Agents, appointment and power of. § 2182 et seq.

[Persons acting publicly as officers of a corporation will be presumed rightfully in office, and their official acts will be binding on corporation so far as that third persons are concerned. *Hall v. Carey*, 5 Ga. 239.

If a corporation be dissolved or surrendered the officers under it share its fate. *State v. Mayor*, 5 Ga. 250. The sayings of a stockholder do not

Corporate powers; dissolution — Rev. Code, §§ 1681-1685.

bind corporation. *Mitchell v. R. R. Co.*, 17 Ga. 574. Corporation liable in damages for wrongs committed by its officers and agents. *Green v. So. Ex. Co.*, 41 Ga. 515. Corporation bound by audited accounts of its treasurer. *Min. Co. v. King*, 45 Ga. 34. And by contract made by agent in another State. *Id.*

Assets placed in hands of officer, corporation necessary party to bill filed by stockholder against such officer for account. *Young v. Moses*, 53 Ga. 628.

Assignment by officers after term had expired under authority of stockholders granted before, valid. They were officers *de facto* if not *de jure*. *Milliken v. Steiner*, 56 Ga. 251.

Contracts between two corporations, not rendered void by fact that persons making it were officers in both. *Mayor v. Inman*, 57 Ga. 370.

Directors are agents of the corporation, and not of the stockholders. *McDonough v. Bellamy*, 18 Ga. 411.

Directors cannot be considered as trustees, or prohibited, as such, from purchase of trust property or stock belonging to corporation. *Hartridge v. Rockwell*, 5 Ga. 260.

Settlements between company and stockholder, to whom former is indebted, may be made by directors, nothing fraudulent appearing. *R. R. Co. v. Vason*, 57 Ga. 314.

Contract made with corporation itself, mistake in deed by officer, in execution, corrected. *Town Co. v. Brower*, 80 Ga. 258; *s. c.*, 7 S. E. Rep. 273. That officer had power to contract, and to execute, not after case. *Id.*

Action for deceit against directors for hypothecating illegal stock, not affected by subsequent dealing with corporation. *Bank v. Sibley*, 71 Ga. 727. And in such action a corporate existence cannot be called in question. *Id.*

Declarations of directors inadmissible to prove one to have been an agent. *R. R. Co. v. Varndoe*, 81 Ga. 176; *s. c.*, 7 S. E. Rep. 129.

Directors and shareholders are quasi trustees, and without special power under charter cannot bind corporation or its assets by contract to pay usury. *Warehouse Co. v. Johnson*, 62 Ga. 308.

Corporation bound by license granted by general superintendent. *R. R. Co. v. Mitchell*, 69 Ga. 114.

Unwise and improper management of affairs of corporation does not furnish reason for equitable interference at instance of general creditors, when. *Dodge v. Manganese Co.*, 69 Ga. 665.

Corporation liable for negligence of manager. *Factory v. Speer*, 69 Ga. 157.

Mortgage by stockholders, officers interested, effect of. *Holst v. Burrus*, 79 Ga. 117; *s. c.*, 4 S. E. Rep. 108.

Stockholders cannot maintain action against directors for official misconduct, whereby income of corporation is decreased, without making other interested stockholders parties. *Bethune v. Wells*, 94 Ga. 486; *s. c.*, 21 S. E. Rep. 239.

A corporation is necessary party to action by stockholders against directors for misconduct in office. *Id.*

Accommodation indorsers being directors, not entitled to notice of protest, when. *Hull v. Myer*, 90 Ga. 674; *s. c.*, 16 S. E. Rep. 653.

Note given by officer or agent of corporation illegal, no recovery on common counts for money had and received, when. *Dobbins v. Mfg. Co.*, 75 Ga. 239.

Notice to president is notice to corporation. *White v. Barlow*, 72 Ga. 888.

Directors and managers are trustees for stockholders, and are personally liable for misappropriation. *Real Estate Co. v. Bank*, 75 Ga. 40. Equity is proper form in which to seek release. *Id.*

Whether, for stock illegally issued in excess of amount authorized by charter, the corporation itself or the directors individually are liable, is not decided. *Bank v. Sibley*, 71 Ga. 726.

Agent's authority, by resolution of directors, to purchase under contract reserving title. *Merchants v. Cottrell*, 96 Ga. 108; *s. c.*, 23 S. E. Rep. 127.

Evidence examined, and held that the secretary of defendant corporation had power and authority to make and indorse notes in its corporate name. *Jacobs Pharmacy Co. v. Southern Banking & Trust Co.*, 25 S. E. Rep. 171.]

Section IV.

Of Dissolution.

Sec. 1682. State reserves right to withdraw private charter.

1683. Charters heretofore granted, vested rights.

1684. Corporation, how dissolved.

1685. Charter, how forfeited.

1686. Surrender of franchises.

1687. Death of members.

1688. Disposition of assets upon dissolution.

1689. Dissolution not to affect collateral liability.

§ 1682. In all cases of private charters hereafter granted the State reserves the right to withdraw the franchise, unless such right is expressly negatived in the charter.

See Const., art. I, p. 2.

[Section cited. *State v. R. R. Co.*, 60 Ga. 270; *R. & E. Co. v. State*, 54 *Id.* 401. Where exclusive authority is vested in a private corporation by its charter, general assembly retains power to modify or restrict such exclusive grant. *R. R. Co. v. R. R. Co.*, 49 Ga. 152.]

§ 1683. Private corporations heretofore created, without the reservation of the right of dissolution, and where individual rights have become vested, are not subject to dissolution at the will of the State.

See Const., art. I, par. 2.

[Section cited. *R. & B. Co. v. State*, 54 Ga. 404.]

§ 1684. Every corporation is dissolved, 1. By expiration of its charter; 2. By forfeiture of its charter; 3. By a surrender of its franchises; 4. By the death of all its members without provisions for a succession.

[Section construed. *Logan v. R. R. Co.*, 87 Ga. 533; *s. c.*, 13 S. E. Rep. 516. Cited. *Young v. Moses*, 53 Ga. 629. Bankruptcy does not terminate corporate existence nor vacate office of directors. *Holland v. Peymann*, 60 Ga. 174. Rights of creditors after dissolution, how enforced. *Logan v. R. R. Co.*, *supra*. Dissolved corporation cannot prosecute pending suits, when. *Van Pelt v. R. & L. Assn.*, 87 Ga. 370; *s. c.*, 13 S. E. Rep. 574.]

§ 1685. A corporation may forfeit its charter: 1. By a wilful violation of any of the essential conditions on which it is granted; 2. By a misuser or non-user of its franchises. This dissolution dates from the judgment of a court of competent jurisdiction declaring the forfeiture.

See Const., art. I, par. 3.

[Section cited. *Young v. Moses*, 53 Ga. 629. A private corporation cannot be deprived of its franchise except by judicial judgment upon a quo warranto. *State v. Mayor*, 5 Ga. 250. If a corporation be dissolved or surrendered the officers under it share its fate. *Id.* Corporation may be dissolved for a breach of trust. *Young v. Harrison*, 6 Ga. 130.

Dissolution — Rev. Code, §§ 1686-1689; Lien on shares, id., § 1999.

No advantage can be taken of any non-user or misuser on part of corporation, by any defendant in any collateral action. *Id.*; *R. R. Co. v. R. R. Co.*, 14 Ga. 327.

The fact of one person becoming owner of all stock and property of a corporation does not render a corporation dormant, or forfeit franchises, and it is still viable in its corporate name. *Mfg. Co. v. White*, 42 Ga. 148.

Charter of corporation may be forfeited for what. *City v. Gas Light Co.*, 71 Ga. 106. Forfeiture and dissolution can be affected only by judgment of court so declaring, but only from such judgments. *Id.* Misuser or non-user cannot be set up collaterally as a defense to an action. *Id.*

§ 1686. A corporation may be dissolved by a voluntary surrender of its franchises to the State. In such case such surrender does not relieve its officers or members from any liability for the debts of the corporation.

Forfeiture for delinquent taxes. § 877. See § 1689a. Individual liability. § 1676 (3).

[Individuals who compose a corporation may, by contract or in law, incur liabilities, during its existence, which will survive the charter. *Hightower v. Thornton*, 8 Ga. 486. Though at common law, upon dissolution, debts due to and from corporation are extinguished. *Id.*

Under Code, a corporation may, by voluntary surrender of its franchises, terminate its existence. *Bank v. Heard*, 37 Ga. 401. But if created by legislative act, the surrender must be accepted by the general assembly. *Id.*

§ 1687. The death of all the members of a corporation, or so many of them as to render it impossible under the charter to provide a succession, is a dissolution thereof.

§ 1688. Upon the dissolution of a corporation, for any cause, all of the property, and assets of every description belonging to the corporation shall constitute a fund — first, for the payment of its debts, and then for equal distribution among its members. To this end the superior court of the county where such corporation was located shall have power to appoint a receiver, under proper restrictions, properly to administer such assets under its direction.

See § 3149(a).

[Creditors of insolvent corporation, whose charter has been forfeited, and who have exhausted their legal remedies against it, may sue in chancery, for the assets of that corporation, and have them applied in payment of debt. *Hightower v. Mustian*, 3 Ga. 506.

It is only in a strong case that equity will, at instance of minority stockholder, interfere with management of affairs of a corporation, and appoint a receiver. General charges of fraud, illegality or mismanagement are insufficient and demurrable. *Hand v. Dexter*, 41 Ga. 454.

Procedure to get at assets in hands of officer or agent of dissolved corporation. *Young v. Moses*, 53 Ga. 628.]

§ 1689. The dissolution of a corporation, from any cause, shall not, in any manner, affect any collateral or ultimate or other liability, legally incurred by any of its officers or members.

[Right to have unpaid stock drawn in, to extinguish outstanding debts is as clear and strong after, as before dissolution. *Hightower v. Thornton*, 8 Ga. 486. Action against directors of bank for overissue does not abate by expiration of charter during pendency of suit. *Moultrie v. Smiley*, 16 Ga. 289. Above section alters the common-law rule. *Robinson v. Lane*, 19 Ga. 338. Liability of directors continue notwithstanding expiration of charter. *Hargroves v. Chambers*, 30 Ga. 581.]

## TITLE III. OF RELATIONS ARISING FROM CONTRACTS.

### CHAPTER II.

#### Of Debtor and Creditor.

##### ARTICLE V.

Sec. 1999. Lien by by-laws of a corporation.

2000. Liens under charters.

§ 1999. The by-laws of a corporation may create a lien upon the shares of other property of the stockholders in favor of the company; such lien is binding upon the corporations themselves, and upon all creditors giving credit with notice, or purchasers at public or private sale purchasing with notice.

See § 1679 (3), note.

[Power to sell stock of delinquent stockholder is a cumulative remedy, and does not impair right to compel payment by action. *Hightower v. Thornton*, 8 Ga. 486.

Stockholder whose stock has been forfeited, not relieved from payment of note given by him for stock. *Mitchell v. R. R. Co.*, 17 Ga. 574.

Transfer of stock to an assignee did not destroy existing liens to others. *Dobbins v. Walton*, 37 Ga. 614.]

§ 2000. All liens created under the charters of incorporated companies are continued under this Code.

### CHAPTER V.

#### Of Principal and Agent.

##### ARTICLE I.

Sec. 2182. Corporation may create an agent, how.  
2183. Agency irrevocable, when.

§ 2182. \* \* \* A corporation may create an agent in its usual mode of transacting business, and without its corporate seal.

Officers, see § 1680.

[Agency created by ratification of acts. *Bank v. Bank*, 1 Ga. 418.

Promissory note given by agent will bind corporation, when. *Batts v. Cuthbertson*, 6 Ga. 166.

A corporation is liable for frauds and torts of its agents in same manner as individuals; tendency of the law is to place corporations and individuals upon same footing. *McDonald v. Bellamy*, 18 Ga. 411; *Mill Co. v. State*, 54 id. 635.

If agent of a corporation have authority to convey a mortgage, and attests thereto anything which the law recognizes as a seal, it will be a good execution by the corporation. *Johnston v. Crawley*, 25 Ga. 316.

Corporation may be charged with libel through acts of agent. *Machine Co. v. Souder*, 58 Ga. 64.

Agency — Rev. Code, §§ 2183, 2209; Property, id., §§ 2234, 2237, 2256.

General superintendent is agent of corporation, and demand on him by employe for wages was sufficient. *Hobbs v. Lumber Co.*, 74 Ga. 371.

Powers of agent of corporation to make note, under charter and letter of attorney, is to be construed by court. *Dobbins v. Mfg. Co.*, 75 Ga. 238. Agent to bind company, all requirements of charter must be pursued. *Id.*

Sayings and acts of agent, within scope, binding. *Ins. Co. v. Edwards*, 74 Ga. 228.

Statement of man that he is agent will not make corporation his principal. *R. R. Co. v. Varndoe*, 81 Ga. 176; s. c., 7 S. E. Rep. 129.

Certiorari of corporation, affidavit of agent held good here. *Pioneer Co. v. Mfg. Co.*, 64 Ga. 38.

A contract by agent under seal is his individual contract, when. *R. R. Co. v. Varndoe*, 81 Ga. 176; s. c., 7 S. E. Rep. 129.

Corporation acts only by and through its members and agents; their acts or frauds are its own. *Fuche v. Browne*, 74 Ga. 251.

Admissions of agents of corporation, in scope of business, admissible in evidence. *Inboden v. Min. Co.*, 70 Ga. 87. Also of president in an action with business of his office. *Id.*; *Dobbins v. P. M. Co.*, 75 Ga. 450.

Power of agent to bind corporation by promissory note, not implied, when. *Dobbins v. Mfg. Co.*, 75 Ga. 238.]

§ 2183. (As amended December 13, 1894.) Generally, an agency is revocable at the will of the principal. The appointment of a new agent for the performance of the same act, or the death of either principal or agent, revokes the power. If, however, the power is coupled with an interest in the agent himself, it is not revocable at will; and in all cases the agent might recover from the principal, for an unreasonable revocation, any damages he may have suffered by reason thereof, but every creditor or other person advancing money upon the pledge of a certificate of stock, or other script representing an ownership interest in corporations in Georgia, shall have such an irrevocable interest in such certificate of stock or other script representing an ownership interest in corporations in Georgia as not to be affected by the death, insanity, or legal disability thereafter of the person in whose name such stock or other script stands upon the books of any corporation in Georgia; But that such pledgee or holder of such stock or script assigned in blank, coupled with the power of attorney, shall have the same right after the death, insanity, or legal disability of the person in whose name said stock stands upon the books of said corporation as before the death, insanity, or legal disability of such person.

### ARTICLE III.

Sec. 2209. When agent has right of action.

§ 2209. Generally an agent has no right of action on contracts made for his principal. The following are exceptions:

2. Where promissory notes or other evidences of debt are made payable to an agent of a corporation or joint-stock company.

## TITLE IV. OF PROPERTY.

### CHAPTER I.

#### Of Realty.

Sec. 2234. Franchise, when exclusive.

§ 2234. No franchise granted by this State shall be held to be exclusive, unless plainly and expressly so declared to be in the grant.

[In construction of statutes, made in derogation of common right, and in favor of corporation, care should be taken not to extend them beyond their express words or their clear import. *Mayor v. R. R. Co.*, 7 Ga. 221; *Mayor v. Hartridge*, 8 Ga. 23.

Where exclusive authority is vested in a private corporation, said body retains power to modify or restrict such exclusive grants. *R. R. Co. v. R. R. Co.*, 49 Ga. 151.

Charter rights antagonistic to rights of private property will be strictly construed, and their exercise must be in direct compliance with law granting them. *R. R. Co. v. Gilbert*, 71 Ga. 591.

Grants of power must be expressed or by necessary implication. *Davis v. R. R. Co.*, 87 Ga. 605; s. c., 13 S. E. Rep. 567.]

### CHAPTER II.

#### Of Personality.

Sec. 2237. Stocks in incorporated companies personality.

§ 2237. (As amended December 11, 1893.) \* \* \* Stocks representing shares in an incorporated company holding lands or a franchise in or over lands are personality.

[Railroad stock is personal assets. *R. R. Co. v. Thomason*, 49 Ga. 498; *Ross v. R. R. Co.*, 53 Ga. 514.

Bona fide purchaser of railroad stock protected. *Stinson v. Thornton*, 56 Ga. 377.]

## TITLE V. OF ESTATES.

### CHAPTER II.

#### Estates for Life.

Sec. 2256. Issue of new stock belongs to remainderman.

§ 2256. The natural increase of the property belongs to the tenant for life. Any extraordinary accumulation of the corpus — such as issue of new stock upon the share of an incorporated or joint-stock company — attaches to the corpus and goes with it to the remainderman.

[“Income” devised to life tenant, with remainder over, dividends, whether in cash or in certificates of indebtedness, are part of the income, and go to life tenant. *Miller v. Guerrard*, 67 Ga. 284.]

## TITLE VI. OF TITLE AND THE MODE OF CONVEYANCE.

### CHAPTER III.

#### Administration.

#### Section XII.

#### Of Foreign Administrators.

Sec. 2618. Foreign executor, administrator or guardian may transfer stock.

§ 2618. (As amended December 18, 1893.) Such (a) foreign executor or administrator or

Levy on shares — Rev. Code, § 2626; Receivers, id., § 3149a.

foreign guardian may transfer the stock of any bank or other corporation in this State standing in the name of the decedent or ward and check for deposits made by him and dividends declared on his stock, first filing with the bank or corporation a certified copy of his appointment and qualification; Provided, however, That no stock shall be transferred until the foreign executor, administrator or guardian shall have given notice once a week for four weeks in the paper in which the sheriff's notices are published in the county of the principal office of the corporation of his intention to make said transfer.

[Foreign guardian, if authorized by law of State of appointment, may sell and transfer stock in corporation of this State without application to courts here. *Ross v. R. R. Co.*, 53 Ga. 514.]

## CHAPTER IV.

### Title by Judicial Sale.

#### ARTICLE I.

Sec. 2626. Levy on and sale of shares of stock.

§ 2626. (As amended December 17, 1894.) Shares in a bank or other corporation may be levied on and sold, either under attachment or *fi. fa.*, in the county where the corporation does business—notice of such levy being given to the defendant, if his residence be known, and also the officers of the corporation. Upon demand by any sheriff, constable, or other levying officer of this State, having in his hands any execution or attachment against any person who is the owner of any shares or stock of said bank or joint-stock company, upon the president, superintendent, manager, or other officer of any corporation or joint-stock company having access to the books thereof, said president, superintendent, manager, or other officer aforesaid shall disclose to said levying officer the number of shares and the par value thereof owned by the defendant in said execution or attachment, and on refusal to do so, shall be considered in contempt of court and punished accordingly. Such sales shall be made only by the sheriff or his deputy, and constables levying thereon shall turn over such levies to the sheriff. Only one share shall be sold at once. The sheriff shall give the purchaser a certificate of his purchase, which, on presentation to the officers of the corporation, shall authorize a transfer of the stock to him. Transfers of stock after levy of an attachment, or after judgment, and with notice to the corporation of the levy or judgment, are absolutely void. If the shares be in a railroad, canal, turnpike, or plank-road company, they may be levied on and sold in any county through which the same passes.

[Where stock is attached and sold at sheriff's sale, it is duty of proper officer of corporation to

make necessary transfer on books of company. If he refuses to do so, mandamus is the proper proceeding. *Bailey v. Stohecker*, 38 Ga. 259.

Merely transfer of stock on books by an officer of a company will not make company liable as guarantor of vendor's title to the stock. *Nutting v. Thomasson*, 46 Ga. 34.

Stock held as collateral is subject to attachment. *Kyle v. Montgomery*, 73 Ga. 337.

Purchaser of stock at sheriff's sale with notice of lien purchases such interest as corporation had. *Tuttle v. Walton*, 1 Ga. 43. Stock in a corporation is not subject to be levied on, under an attachment against owner of stock. *Haley v. Reid*, 16 Ga. 437.]

## TITLE IX. OF EQUITY.

### CHAPTER VI.

#### Administration of Assets.

Sec. 3149a. Receiver of assets of insolvent corporation.

§ 3149a. (As amended December 13, 1894.) In case any corporation, not municipal, or any trader, or firm of traders, shall fail to pay, at maturity, any one or more matured debts, payment of which has been properly demanded of such debtor, and by him refused, and shall be insolvent, it shall be in the power of the court of equity, under a creditor's bill, to which one or more creditors, representing one-third in amount of the unsecured debt of such insolvent corporation, trader, or firm of traders, whose debts are matured and unpaid, shall be necessary parties, to proceed to collect the assets, real and personal, including choses in action and money, and appropriate the same to the creditors of such trader, firm of traders, or corporation.

Relief from individual liability. See Act No. 11, p. 28. See § 1673 (3), note.

[A citizen cannot be made receiver of a broken corporation without his consent. *Bethune v. Dougherty*, 21 Ga. 257. Under above section, counsel fees are to be borne by creditors proportionately. *Trust Co. v. Thurman*, 20 S. E. Rep. 141.

An existing corporation may make an assignment for benefit of creditors. *McCaillie v. Walton*, 37 Ga. 611.

Insolvent corporation is incapable of making general assignment for benefit of creditors, either with or without preference. *Steel Co. v. Agr. Works*, 76 Ga. 135.

Assignment by corporation, while in existence, good against debtor though charter expires before assignee sues. *Harvey v. Cubbedge*, 75 Ga. 793.

Assets of corporation trust fund to pay debts, and stockholder is chargeable with notice of the trust, and cannot hold adversely so as to defeat judgment creditor. *Moses v. Mfg. Co.*, 62 Ga. 456.

Unpaid subscriptions of insolvent corporation are assets for benefit of creditors, of which court of equity will compel payment. *King v. Sullivan*, 93 Ga. 621; s. c., 20 S. E. Rep. 76. But jurisdiction for this purpose over a foreign corporation which has no office, officer, agent, or place of business in this State, cannot be obtained by merely serving corporation by publication. *Id.* How creditors must proceed in such case. *Id.*

A non-trading corporation subject to Insolvent Traders' Law. *Nat. Bk. v. Factory*, 91 Ga. 284; s. c., 18 S. E. Rep. 160.



Suits against corporations — Rev. Code, §§ 3367-3369.

Corporation expires by limitation of charter; pending suit, a receiver appointed, receiver maintains action. *Houston v. Redwise*, 85 Ga. 130; s. c., 11 S. E. Rep. 662.

President of insolvent corporation liable for contempt, when. *Tolleson v. Bank*, 85 Ga. 171; s. c., 11 S. E. Rep. 599.

Decree making assessment for unpaid subscription to capital stock of insolvent corporation, binds corporator though he has no notice. *Howard v. Glenn*, 85 Ga. 238; s. c., 11 S. E. Rep. 610.

Corporate assets of every description constituted fund for payment of its debts. *Beek v. Henderson*, 76 Ga. 360.

Capital stock subscribed reduced by resolution to actual amount paid in, all subscribers assenting, releases them from further liability to corporation and to each other. *Hill v. Silver*, 81 Ga. 501; s. c., 8 S. E. Rep. 808. But reduction being to an amount less than minimum authorized capital, creditors may hold stockholders for difference. *Id.*

If amount fixed and required by charter has not been subscribed, or subscriptions have been realized, without consent of stockholders, his subscription cannot be enforced against him. *Brand v. R. R. Co.*, 77 Ga. 506; s. c., 1 S. E. Rep. 255.

Equitable transfer to third person to pay debts of corporation are enjoined at suit of shareholder not paid up. *Landes v. Mfg. Co.*, 73 Ga. 172.

Owner of all the shares of a bank owing no debts, transferring title to charter is not liable for debts subsequently contracted, when. *Morgan v. Brown*, 77 Ga. 627.

Receiver may sue; a decree authorizing, admissible, without pleadings, when. *Beek v. Henderson*, 76 Ga. 360.

Insolvent corporation may make mortgage as additional security to note indorsed by stockholders. *Welch v. Atla. Co.*, 89 Ga. 297; s. c., 15 S. E. Rep. 282.

When corporation is to be regarded as insolvent. *Banking Co. v. Lumber Co.*, 91 Ga. 625; s. c., 17 S. E. Rep. 968.

The fact that one corporation owns the entire capital stock of another does not vest in it legal title to the latter's property so as to render such property subject to the former's debts as against the latter's creditor. *Exchange Bank v. Mason Const. Co.*, 25 S. E. Rep. 326.

On rescission of a contract of sale entered into by an insolvent corporation, a stockholder who advanced money for the betterment of the property purchased, held not entitled to restitution as a creditor precedent. *Collins Park, etc., R. Co. v. Short Elec. Ry. Co.*, 25 S. E. Rep. 929.]

§ 3367. In all suits against the members of a private association, joint-stock company, or the members of existing or dissolved corporations, to recover a debt due by the association, company, or corporation, of which they are or have been members, or for the appropriation of money or funds in their hands to the payment of such debt, the plaintiff or complainant in such suit may institute the same, and proceed to judgment therein against all or any one or more of the members of such association, company, or corporation, or any other person liable, and recover of the member or members sued the amount of unpaid stock in his hands, or other indebtedness of each member or members: Provided, The same does not exceed the amount of the plaintiff's debt against such association, company, or corporation; and if it exceeds such debt, then so much only as will be sufficient to satisfy such debt.

See § 1679 (1), note.

[Suit may be brought in usual way by citizen of Georgia against a corporation, though cause of action arose in another State. *Berry v. R. R. Co.*, 39 Ga. 555. Section referred to and construed. *R. R. Co. v. McDaniel*, 56 Ga. 135.]

§ 3368. In all cases where the person or property of an individual may be injured, or such property destroyed, by the carelessness, negligence, or improper conduct of any railroad company, or officer, agent, or employee of such company, in or by the running of the cars or engines of the same, such company shall be liable to pay damages for the same to any one whose property or person may be so injured or destroyed, notwithstanding any by-laws, rules, or regulations, or notice, which may be made, passed, or given, by such company, limiting its liability.

§ 3369. Service of all bills, subpoenas, writs, attachments, and other original process necessary to the commencement of any suit against any corporation in any court of law or equity, except as hereinafter provided, may be perfected by serving any officer or agent of such corporation, or by leaving the same at the place of transacting the usual and ordinary public business of such corporation, if any such place of business then shall be within the jurisdiction of the court in which said suit may be commenced. The officer shall specify the mode of service in his return.

[Service of summons upon a corporation. See *W. L. Co. v. Bank*, 39 Ga. 685. Upon a foreign corporation. *Ins. Co. v. Carruth*, 41 Ga. 600.

Agent of a foreign corporation may acknowledge service so as to authorize a general judgment against his principal. *R. R. Co. v. R. R. Co.*, 51 Ga. 458.

Service upon president in county where he resided at commencement of action, where books were, and where stockholders were under notice to meet, is sufficient service on company. *Bank v. Mfg. Co.*, 55 Ga. 36.

Part Third. The Code of Practice.

TITLE II. OF ACTIONS.

CHAPTER III.

Petition and Process.

ARTICLE II. PARTICULAR CASES.

Section III.

Suits against Corporations.

Sec. 3367. Joint-stock companies, corporations, etc., how sued.

3368. Liability of railroad companies for injury to person or property.

3369. Service of process against corporations. 3369(a). Lessees of railroad, how served.

3370. When and how service may be perfected by publication.

3371. Notice to stockholders and effect of.

3372. Execution, property subject to.

3373. Presiding officer bound to give names of stockholders, etc.

3374. President or stockholder may defend suit.

3375. Illegality of execution.

3376. Preceding sections cumulative only.

Service of garnishment on domestic corporation, whose president resides in this State, must be upon president, and not upon subordinate officer, though president be temporarily absent. *Steiner v. R. R. Co.*, 60 Ga. 532; *Brigham v. Ry. Co.*, 74 id. 365.

Garnishment served on corporation based on grant of charter is void. *Bartram v. Mfg. Co.*, 60 Ga. 751.

Members of company cannot be held liable as partners under summons directed to company as a corporation. *Id.*

Jurisdiction of corporation, as defendant, where locality not fixed by charter, but office established in county of suit. *Coal Co. v. Hazlett*, 83 Ga. 550; *s. e.*, 10 S. E. Rep. 435.

Officer serving process on corporation to certify in his return manner in which such service was perfected. *Hayden v. Bank*, 66 Ga. 150.

Service on general manager, though out of State, sufficient, when. *Stewart v. Rutherford*, 74 Ga. 336.

Affidavit denying legality of service insufficient, when. *Hotel Co. v. Furniture Co.*, 73 Ga. 94.

The agent of a foreign corporation attending court as a witness for the State in a criminal cause, is exempt from service upon him as such agent for process against the corporation. *Fidelity & Deposit Co. v. Everett*, 25 S. E. Rep. 734.]

§ 3369a. Whenever any railroad company, incorporated under the laws of this State, or whose line of road may extend into this State, may have leased their line of road to any person or corporation, and said lessee, or lessees, are in possession of said road, service on such leasing company may be perfected as follows: The plaintiff shall file with the clerk of the superior court, judge of the county court, or justices of the peace, where such suit is commenced, a notice in writing, directed to the president of the leasing company, informing him fully of the pendency of such suit, and its nature, which shall be enclosed in a stamped envelope, to be furnished by and at the expense of the plaintiff, and sent by said clerk, county judge or justice, through the mail to the president of the leasing company at his residence, at least fifteen days before the appearance term, and said clerk, judge or justice shall, in addition, deliver to the sheriff or constable a copy of the writ or summons, who shall serve the same on the depot agent of said lessees, and make return thereof as in other cases.

[Venue of action against railroad company. See 35 Ga. 144. Declarations of employees of railroad company should be received with caution. *Wright v. R. & B. Co.*, 34 Ga. 330.]

§ 3370. In all cases where any corporation shall have no public place for doing business, or shall have no individual in office upon whom service of writs or process may be perfected within the knowledge of any party, complainant either in law or equity, the said complainant may make an affidavit that the said corporation has no public place of doing business, or has no individual in office upon whom service of writs or process may be perfected, within the knowledge of said complainant, and such affidavit being filed in the clerk's office of the court to which

the said writ may be made returnable, the clerk of the said court shall issue a citation to the said defendants to be and appear at the said court, to answer the complaint; which citation shall be published once a week for three weeks prior to the court to which the said complaint may be returnable, in some newspaper published in the county in which suit is brought. If no paper is published therein, then in the one nearest thereto; and such advertisement shall be deemed and held a service upon such corporation for all purposes either in law or equity, and any copy of the newspaper containing said publication shall be received in any of the courts as sufficient evidence of such service.

[Section referred to and construed. *Heard v. Sibley*, 52 Ga. 312; *Young v. Moses*, 53 id. 628; *Cherry v. R. R. Co.*, 59 id. 447; *Branch v. Bank*, 50 id. 413.]

§ 3371. Plaintiffs or complainants, within one month after the institution of any suit or suits, at law or equity, against any corporation, joint-stock or manufacturing company, may publish once a week, for four successive weeks, in some public gazette of this State, notice of the commencement of said suit or suits, and said publication shall operate as notice to each stockholder in said corporation, joint-stock or manufacturing company, for the purposes hereinafter mentioned.

[Notice by publication under this section need not appear of record. *Stone v. Davidson*, 56 Ga. 179. Section referred to and construed. *Heard v. Sibley*, 52 Ga. 311; *Gresham v. Crossland*, 59 id. 278.]

§ 3372. When notice has been given as provided in the preceding sections, and a judgment or decree has been obtained against any corporation, joint-stock or manufacturing company, where the individual or private property of the stockholders is bound for the whole or any part of the debts of said incorporation, joint-stock or manufacturing company, execution shall first be issued against the goods and chattels, lands and tenements of said corporation, joint-stock or manufacturing company; and upon the return thereof by the proper officer, with the entry thereon of "no property to be found," then, and in that case, the clerk, or other officer, upon an application of the plaintiff, his agent, or attorney, accompanied with a certificate as hereinafter directed to be obtained, forthwith shall issue an execution against each of the stockholders (if required) for their ratable part of said debt and cost of suit, in proportion to their respective shares, or other liabilities under their charter of incorporation.

[Section referred to and construed. *Heard v. Sibley*, 52 Ga. 311.

Judgment creditor of corporation may go into a court of equity to reach equitable assets of cor-

Suits against corporations — Rev. Code, §§ 3373-3376; Discovery, id., §§ 3810, 3811, 3813.

poration, to exhaust his legal remedies. *Stinson v. Williams*, 35 Ga. 170.

Equity will compel payment of sufficient percent of unpaid stock to meet debts. *R. R. Co. v. McDaniel*, 56 Ga. 191.

Judgments of stockholders against company may be set off in equity against suit under individual liability calls. *Boyd v. Hall*, 56 Ga. 563. But such judgment may be attacked for fraud. *Id.*

Where charter provides that stockholders shall be liable pro rata for debts of company, recovery of entire debt may be out of one, provided it does not exceed defendant's proportion. *Id.*

§ 3373. It shall be the duty of the president or presiding officer of such incorporation, joint-stock or manufacturing company, by whatever name he may be designated, upon application of the plaintiff, his agent, or attorney, forthwith to give a certificate, under oath, of the stockholders in said company, and the number of shares owned by each at the time of the rendition of judgment against said company; and if, upon application by the plaintiff, his agent, or attorney, the president, or officer aforesaid, shall refuse to give a certificate as aforesaid, or shall abscond or conceal himself to avoid giving the same, the plaintiff, his agent, or attorney may make oath of such refusal, and the clerk, or other officer, shall issue an execution against such president or presiding officer, as aforesaid, for the amount of principal, interest and cost of said suit.

[Transfer of shares on books is prima facie evidence of ownership of shares. *Thornton v. Lane*, 11 Ga. 459. As to duty of president under above section, see *Stone v. Davidson*, 56 Ga. 182.]

§ 3374. If the president, or other officer of said corporation, joint-stock or manufacturing company, shall fail or refuse to defend said suit or suits brought as aforesaid, any one of the stockholders of the said company shall be permitted to plead to and defend the same in as full and ample manner as said company, in its corporate capacity, could or might do.

[Unless expressly authorized by statute, stockholders are not allowed to plead and defend for the corporation, and are not parties on the record. *Blackman v. R. & B. Co.*, 58 Ga. 189. And cannot maintain bill for protection of corporate property, without alleging refusal of corporation to act in its corporate name. *Ware v. Bazemore*, 58 Ga. 317. Section referred to and construed. *Stone v. Davidson*, 56 Ga. 181.]

§ 3375. In a judgment against a corporation, joint-stock or manufacturing company, under the provisions of this Code, the defendant or defendants in execution shall be entitled to an illegality under the same rules, regulations and restrictions as defendants are in other cases.

[Section referred to and construed. *Stone v. Davidson*, 56 Ga. 181.]

§ 3376. The preceding sections in relation to proceedings against corporations, joint-

stock and manufacturing companies shall be understood and construed as cumulative of the common law.

[Remedy under sections 3367 to 3375 are cumulative. *Mosley v. Jones*, 66 Ga. 466. Suit against individuals named and to foreclose lien, judgment against them, valid. *Id.*]

## TITLE X. OF EVIDENCE.

### CHAPTER III.

#### Discovery from the Parties.

Sec. 3810. Discovery at law.

3811. Interrogatories directed to officers of corporation may be filed.

3813. Failing to answer, or answering evasively.

§ 3810. Discovery may be had from the opposite party, either nominal or real, in any case pending in any court in this State.

§ 3811. (As amended November 12, 1889.) The party seeking the discovery may either subpoena the other party as a witness, or else file interrogatories, and sue out a commission, as in cases provided for other witnesses. In the latter event, the right of cross-examination exists as in other cases, and in all cases in any of the courts of this State where either the plaintiff or defendant is a corporation, either foreign or domestic, public or private, it shall be the right of the opposite party to file with the clerk of the court, where such case is pending, interrogatories directed to the president, secretary, treasurer, or other officer or agent of said corporation, and it shall be the duty of the officer or agent named in such interrogatories to sue out a commission directed to himself, and to have said interrogatories executed and returned to the next term of the court; Provided, The opposite party, or his attorney, shall give twenty days' notice before the sitting of said court to the attorney of record, or to any officer or agent of such corporation in the county where suit is pending, that interrogatories have been so filed, and provided said corporation or its agent shall not be required to advance the costs of executing said interrogatories.

§ 3813. (As amended November 12, 1889.) \* \* \* And if either party be a corporation, the officer called on to give testimony shall be subject to attachment for contempt upon his failure to answer, and the court may dismiss the case or strike the plea, according as the party corporation may be plaintiff or defendant, upon the failure of any of its officers or agents to give testimony or to execute and return interrogatories as provided by law.

[Statute in respect to discovery does not seem adapted to obtaining a discovery from a corporation. *Hatcher v. Bank*, 79 Ga. 549; s. c., 5 S. E. Rep. 127.]

Illegal dividends — Rev. Code, §§ 4604a-c. Suits — Act of October 16, 1885.

## Part Fourth. Penal Laws.

### TITLE I. PENAL CODE.

#### ELEVENTH DIVISION.

##### Cheats and Swindles.

- Sec. 4604a. When dividends prohibited.  
 4604b. Penalty for violating preceding section.  
 4604c. Additional penalties.

§ 4604a. No joint-stock company, corporation, body corporate, or other association, shall declare any dividend, or dividends, or distribute any money among its members as profits, when such dividend or dividends, or money, are not the legitimate proceeds of its investments.

[Dividends on stock correspond to hire property. Purchaser of stock for an administrator at unauthorized sale, liable for dividends, with interest thereon. *Nutting v. Thomasson*, 57 Ga. 418.

Dividends treated as lost, are those innocently paid by corporation, whether to purchaser himself or those holding under him. *Id.* Payments to transferees are all innocent, unless corporation is chargeable with negligence or breach of faith, in suffering transfers to be made. *Id.*

Timely notice to corporation by purchaser of stock would hold dividend for him. *Phinizy v. Murray*, 83 Ga. 748; *s. c.*, 10 S. E. Rep. 358.

To agree to amount of accruing dividend not same as to agree to pay interest on amount of stock, even though rate be the same. *R. R. Co. v. Papot*, 67 Ga. 676. Dividends presumed to follow stock. *Id.*

Dividends paid by mistake recoverable. *Id.*  
 The right of pledgee to recover dividends on the stock pledged, determined. *Armour v. E. Rome Town Co.*, 25 S. E. Rep. 504.]

§ 4604b. Any president, director or directors, or other officer or agent of any joint-stock company, corporation, body corporate, or other association, violating the provisions of the preceding section, shall be guilty of a misdemeanor, and, on conviction, shall be punished as provided in section 4310 of the Code.

§ 4604c. Should the president, directors, or other agent of any corporation, declare a dividend or dividends, in violation of the section aforesaid, they shall, in addition to the punishment prescribed in the section preceding, be liable to be sued for double the amount of damages that any person, or persons, may sustain in consequence of the declaring of such dividend or dividends.

## ACTS CONCERNING CORPORATIONS, PASSED SUBSEQUENT TO THE CODE OF 1882.

1. To define where corporations may be sued, and how service of summons may be effected.
2. To authorize manufacturing and mining companies to become incorporated as savings banks.
3. To prevent officers or agents from using or borrowing money or other property of corporation.
4. To authorize judges of Superior Courts to call Special Terms to grant charters to corporations.
5. To protect discharged employes and prevent blacklisting.
6. To ratify and confirm charters granted by the Superior Courts since Acts of November 13, 1889.
7. To require certain corporations to give to discharged employes the causes of their removal or discharge.
8. To provide for renewal of charters heretofore granted by the general assembly.
9. To provide for amendments of charters heretofore granted by the general assembly.
10. To regulate assignments for benefit of creditors.
11. To provide in what manner stockholders having individual liability shall be relieved of the same.
12. To prohibit combines and trusts.
13. Authorizing judicial sale of franchises of insolvent corporations.

### Act 1.

AN ACT to define where corporations, mining or joint-stock companies may be sued, and to define how service of the suit may be effected.

Section 1. Be it enacted by the general assembly of the state of Georgia, and it is hereby enacted by the authority of the same,

That from and after the passage of this Act, any corporation, mining or joint-stock company, chartered by authority of this State, may be sued on contracts in that county in which the contract sought to be enforced was made, or is to be performed, if it has an office and transacts business there. Suits for damages, because of torts, wrong or injury done, may be brought in the county where the cause of action originated. Service of such suits may be effected by leaving a copy of the writ with the agent of the defendant, or if there be no agent in the county, then at the agency or place of business.

§ 2. Be it further enacted by the authority aforesaid, That where such corporation or company has an agent and place of business in any county or district in which there may be a suit, attachment or judgment upon which garnishment is sought against such corporation or company, the court wherein is pending said proceedings upon which the garnishment is based shall have jurisdiction also of the garnishment proceeding, and service of summons of garnishment upon the agent in charge of the office or business of the corporation or company in the county or district at the time of service shall be sufficient service.

§ 3. Be it enacted by the authority aforesaid, That all laws and parts of laws in conflict with the provisions of this act be, and the same are hereby repealed.

(Approved October 16, 1885.)

Manufacturing, etc., companies as savings banks — Act of September 2, 1887.

[Officer's return designating person served simply "agent," not basis for taking judgment against corporation by default. *Hargis v. Ry. Co.*, 90 Ga. 42; s. c., 15 S. E. Rep. 631.]

**Act 2.**

**AN ACT** to authorize manufacturing and mining companies to become incorporated as savings banks; to prescribe the manner of such incorporation; to define the powers and liabilities of such companies when so incorporated; to secure by lien and define the rights of depositors therein; to fix the rate of interest to be paid depositors, and for other purposes.

**Section 1.** Be it enacted by the general assembly of Georgia, That any manufacturing or mining company, under the laws of this State, with property of the value of twenty-five thousand dollars, over and beyond its lien or secured debts, upon request of a majority of the stock voting at an annual or called meeting, may and shall be incorporated and authorized to do a savings bank business upon the president thereof filing a petition for a charter as a savings bank, which said petition shall be sworn to by said president before a judge of the superior or city court of this State, and shall set forth the vote applying for said franchise, the amount of stock actually paid in, the cost and present value of its real estate, the cost and present value of any and all buildings, fixtures and improvements thereon, the cost and present value of all machinery used and employed by said company, the amount of insurance upon the buildings, fixtures, machinery and improvements of said company, the value of the property of said company over and beyond its lien or secured debts, the total indebtedness of said company and the character and amount of all lien or secured debts.

**§ 2.** Be it further enacted, That upon said petition so sworn to being filed with the Secretary of State and showing therein under the oath of the president that the said company owns and possesses property of the value of twenty-five thousand dollars over and beyond its lien or secured debts, the secretary of State shall issue to said company, under the great seal of the State, a certificate substantially as follows: To all whom these presents may come, greeting: Whereas, \_\_\_\_\_, incorporated under the laws of this State, having filed a petition for savings bank franchises in terms of the law, and it appearing from the oath of the president thereto that said company owns and possesses property of the value of twenty-five thousand dollars over and beyond its lien or secured debts, and having complied with requirements of the law in such cases made and provided: Therefore, by virtue of the act of the general assembly, the State of Georgia hereby grants to \_\_\_\_\_ full authority to exercise the pow-

ers and privileges of a savings bank, and to do a savings bank business in terms of the law in such cases provided, all depositors in such savings bank to have a first lien on the property of said company as provided by law subject to such liens as exist at the date hereof and to all taxes. In witness whereof, these presents have been signed by the governor and secretary of State, at Atlanta, and the great seal of the State attached thereto, this \_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_. And thereupon said company shall be a corporation to do a savings bank business with the powers and subject to the liabilities in this act contained. A copy of said petition and certificate shall be recorded in the office of the clerk of the superior court of the county in which said company's principal office is located within thirty days after said certificate has been issued.

**§ 3.** Upon the issuance of said certificate said company, in addition to its chartered powers as a manufacturing or mining company, shall have power to receive money on deposit; to pay interest as may be agreed on therefor; to use or lend said money; to issue bank-books, certificates of deposit; to lend said money on such security as it may deem fit, whether real or personal; to make by-laws for the government of its savings bank department; to require notice of not more than three months to be given before it shall be required to pay a depositor; to allow the money so deposited to be drawn out by check or draft; but nothing in this act shall be held or taken to authorize said company to do a general banking or discount business.

**§ 4.** Be it further enacted, That said company shall be required to receive on deposit any sum not less than ten cents and not more than one thousand dollars; but no person shall be allowed to have or keep on deposit at any one time more than one thousand dollars, except when the excess beyond the sum is due to interest accrued or due, or added to the sum on deposit as accrued interest or as interest on interest accrued and added.

**§ 5.** Be it further enacted, That it shall be unlawful for said company to receive or have on deposit from any one person more than one thousand dollars, or to pay interest on the same, except as provided in the preceding section.

**§ 6.** Be it further enacted, That married women and minors shall be allowed in their own names to deposit money in said savings bank, and the money so deposited shall not be subject to the control of any husband, parent, guardian or trustee, but may be drawn or checked out by the married women or minors depositing the same.

**§ 7.** Be it further enacted, That subject to liens existing at the date of the issuance of the certificate and petition hereinbefore referred to, and to any and all taxes for State,

county or municipal purposes, each and every depositor therein shall have a first lien upon all real estate, machinery and improvements of said company owned at the date of said petition, and upon all additions thereto subsequently made or acquired, and upon any and all insurance money received in case of fire, provided the same is not re-invested in similar property to which the lien hereby given shall attach. In case of the insolvency assignment, bankruptcy, dissolution or forfeiture of said company, said depositors shall each and all have a lien upon all the assets, moneys, notes, books, accounts and choses in action and other personal property of every sort, and the lien provided for in this section may be foreclosed or enforced by appropriate proceedings by bill in equity to which one or more depositors may be party.

§ 8. Be it further enacted, That said company shall be authorized to pay interest on deposits at a rate to be agreed on not less than four per cent. nor more than eight per cent. But no interest shall be paid on deposits left for less than three months, except by special contract. The same rate of interest shall be paid all depositors without discrimination, and on the first days of July and January of each year successively, the interest due shall be credited to the depositor's account and itself bear interest. Said company may change the rate of interest to be paid by written notice posted in its savings bank office every six months, the rate of interest in no case to be less than four per cent., nor more than eight per cent.

§ 9. Be it further enacted, That such companies are hereby authorized to make rules and by-laws for the government of banking business not inconsistent with law; to define the duty of their officers; to require bond and security; to fix place or places where deposits will be received; to change the same; to print and circulate matter encouraging saving, and generally to do and perform such acts and things needful or necessary in the prosecution of said business not inconsistent with law.

§ 10. Be it further enacted, That no company doing a savings bank business under the provisions of this act shall receive on deposit any sum after the amount of deposits actually on hand are equal in amount to the value of its property beyond its secured debts at the date of the deposit offered. Said savings bank shall be subject to all the provisions of the general banking law of this State so far as applicable to the banking business done by said savings bank.

§ 11. Be it further enacted, That as to deposits made, the statute of limitations shall not apply until demand is made by check or in writing for the sum on deposit, and all unclaimed sums, when the depositor is dead without heirs, or for other cause said deposit

is not called for, shall be subject to such disposition as may by law be provided.

§ 12. Be it further enacted, That all laws and parts of laws in conflict with this act be, and the same are hereby repealed.

(Approved September 2, 1887.)

### Act 3.

AN ACT to prevent officers or agents of banks or other corporations from using or borrowing any money or other property of said banks or other corporations without the permission of the board of directors; to provide a penalty for a violation of this act, and for other purposes.

Section 1. Be it enacted, That from and after the passage of this act, it shall be unlawful for any officer or agent of any bank or other corporation to use or borrow for himself, directly or indirectly, any money or other property belonging to any bank or other corporation of which he is an officer or agent without the permission of a majority of the board of directors, or of a committee of the board authorized to act, and said agent or officer so offending, or any other officer or agent of the same corporation loaning money or property of the said corporation to another agent or officer thereof without the permission of a majority of the board of directors, or of a committee authorized to act, shall be held guilty of a misdemeanor, and on conviction shall be punished as prescribed in section forty-three hundred and ten of the Code: Provided, That nothing herein shall be held to relieve any officer so offending from the pains and penalties of any other violation of the penal laws of this State when the same is committed by means of using or borrowing the property of said corporation without the permission herein required.

§ 2. Be it further enacted, That all laws and parts of laws in conflict with this act be, and the same are hereby repealed.

(Approved September 5, 1887.)

### Act 4.

AN ACT to authorize the judges of the superior courts of this State to call special terms of their courts to grant charters to corporations under the same rules, regulations and restrictions now required by law for grant of same.

Section 1. Be it enacted by the general assembly of the State of Georgia, That from and after the passage of this act, the judges of the superior courts or this State are hereby authorized in their discretion to call and hold special terms of said courts for the purpose of granting charters to corporations under the same rules, regulations and restrictions now required by law for the grant of charters.

§ 2. Be it further enacted by the authority of the same, That all laws and parts of

Protection of employes — Act of August 13, 1891.

laws in conflict with this act be, and the same are hereby repealed.

(Approved September 21, 1887.)

[Above act authorizing judges to call special terms to grant charters to corporations, not unconstitutional. Branch v. Augusta Glass Works, 95 Ga. 573; s. c., 23 S. E. Rep. 128.]

Act 5.

AN ACT for the protection of discharged employes, and to prevent blacklisting, and for other purposes.

Section 1. Be it enacted by the general assembly of the State of Georgia, That if any railroad corporation or company or other corporation doing business in this State, or any agent or employer of any such company or corporation, after having discharged any employe from the service of any such company or corporation, shall prevent or attempt to prevent by word, writing, sign or other means, directly or indirectly, such discharged employe from obtaining employment with any other person, company or corporation, such person, agent, employer, company or corporation shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, nor less than one hundred dollars, and such person, agent, employer, company or corporation shall be liable in penal damages to such discharged person, to be recovered by civil action, but this section shall not be construed as prohibiting any person, agent, employer, company or corporation from giving in writing any other person, company or corporation to whom such discharged person has applied for employment, a truthful statement of the reasons for such discharge, and shall furnish to such discharged employe on his application, to such address as may be given by such discharged employe, within ten days of such application made as aforesaid, a true copy of any such written statement.

§ 2. Be it further enacted, That if any railroad or railway company or corporation, or other corporation doing business in this State, shall authorize or permit, with its knowledge and consent, any of its or their officers, agents or employers to commit either or any of the acts prohibited in this act (except as in this act provided), such railroad or railway company or corporation, or other corporation, shall be liable in treble damages to such employe so prevented from obtaining employment, to be recovered by him in a civil action.

§ 3. Be it further enacted, That it shall be the duty of any person, officer, agent, employer, or company or corporation aforesaid, after having discharged any employe from the service of any such corporation or company, upon written demand by such employe, to furnish to him, within ten days from the application of the same,

a full statement in writing of the cause or causes of his discharge, and if any such person, officer, agent, employer, or company or corporation as aforesaid shall refuse within ten days after demand as herein provided to furnish such statement to such discharged employe, it shall be ever after unlawful for any such person, company or corporation to furnish any statement of the cause of such discharge to any person or corporation or to in any way blacklist, or to prevent such discharged person from procuring employment elsewhere, subject to the penalties prescribed in section 1 of this act. And on the trial of any person for offending against the provisions of this act, any other person who may have authorized or permitted, with knowledge and consent as aforesaid, any such offense, or who may have participated in the same, shall be a competent witness, and be compelled to give evidence, and nothing then said by such witness shall at any time be received or given in evidence against him in any prosecution against the said witness, except on an indictment for perjury, in any matter to which he may have testified, and on the trial of any such person for any violation of this act, the prosecution shall have the authority and process of the court trying the case to compel the production in court, to be used in evidence in the case, the books and papers of any such person, company or corporation, and a failure to produce the same, after such reasonable notice as the court may in each case provide, shall be a contempt of court, and punishable as such as against the custodian or person, company or corporation having the control or in charge of such books, and papers, who shall fail to produce the same; Provided, That said written cause of discharge, when so made as aforesaid, at the request of such discharged employe shall never be used as the cause for an action for slander or for libel, either civil or criminal, against the person or authority furnishing the same.

§ 4. Be it further enacted, That it shall be the duty of any person, company or corporation, who has received any request or notice in writing, sign, word or otherwise, from any other person, company or corporation, preventing or attempting to prevent the employment of any person discharged from the service of either of the latter, on demand of such discharged employe, to furnish to such employe, within ten days after such demand, a true statement of the nature of such request or notice, and if in writing, a copy of the same, and if a sign, the interpretation thereof, with the name of the person, company or corporation furnishing the same, with the place of business of the person or authority furnishing the same, and a violation of this section shall subject the offender to all the penalties, civil and criminal, provided by the foregoing sections of this act.

§ 5. Be it further enacted, That the provisions of this act shall apply to and prevent, under all the penalties aforesaid, railroad companies or corporations, under the same general management and control but having separate divisions, superintendents, or master mechanics, master machinists or similar officers for separate or different lines, their officers, agents and employers from preventing or attempting to prevent, the employment of any such discharged person by any other separate division, or officer, or agent or employer of any such separate railroad line or lines.

§ 6. Be it further enacted, That all laws in conflict with this act be, and the same are, hereby repealed.

(Approved August 13, 1891.)

#### Act 6.

AN ACT to ratify and confirm all charters of corporations granted by the superior courts of this State since the passage of the act approved November 13, 1889.

Section 1. Be it enacted by the general assembly of the State of Georgia, That all charters of corporations which have been granted by the superior courts of this State since the passage of the above recited act, approved November 13, 1889, in the granting of which the law of this State in such case provided has been substantially complied with, as it existed previous to the passage of said above recited act, be, and the same is, hereby ratified and confirmed, and declared to be valid and legal and to have all the force, effect, power and authority as if said charters had been granted in strict compliance and conformity with said above recited act, approved November 13, 1889.

§ 2. Be it further enacted, That all laws and parts of laws in conflict with this act be, and the same are hereby repealed.

(Approved September 7, 1891.)

#### Act 7.

AN ACT to require certain corporations to give to their discharged employes or agents the causes of their removal or discharge, when discharged or removed.

Section 1. Be it enacted by the general assembly of the State of Georgia, That hereafter, when any railroad company, telegraph company, express company, or electric street railroad company shall discharge or remove any agent or employe, it shall be the duty of such company, when requested, in writing, by such discharged agent or employe, to give a specific statement, in writing, setting forth the reason or reasons which have prompted, caused or induced such discharge or removal, and if such discharge or removal has been prompted, caused or induced, in whole or in part, by any complaint or

communication made to such company, it shall be the duty of the company to inform the discharged agent or employe of the substance and nature of such communication or complaint, and when and by whom such complaint or communication was made.

§ 2. Be it further enacted, That the written request provided for in the preceding section of this act, to be effective, must be signed by the discharged agent or employe, and be delivered, by an officer authorized to serve the process of citation of a court within this State, either to the president, secretary or treasurer of such company, or to the local agent representing such company in any county within this State, or by leaving the same at the principal office of such company during office hours.

§ 3. Be it further enacted, That any company to whom has been delivered a written request, as provided for in the preceding section of this act, shall have twenty days from the date of the delivery thereof within which to give the information requested. The statement required by such company to be given to a discharged agent or employe may be delivered to such agent or employe by an officer authorized to serve the process of citation, or by leaving the same, addressed to such discharged agent or employe, with the county clerk of the county in which the written request was preferred. If such company shall fail or refuse to give the information as hereinbefore provided for, or shall give a false statement thereof, it shall be liable to such discharged agent or employe for damages in the sum of five thousand dollars.

§ 4. Be it further enacted, That all laws and parts of laws in conflict with this act be, and the same are, hereby repealed.

(Approved October 21, 1891.)

#### Act 8.

AN ACT to provide for the renewal of all charters heretofore granted by the general assembly of Georgia by special acts to banking, insurance, railroad, canal, navigation, express and telegraph companies.

Section 1. Be it enacted by the general assembly of Georgia, That any banking, insurance, railroad, canal, navigation, express and telegraph companies, heretofore incorporated by the general assembly, by special act may from time to time renew its charter by filing with the secretary of State a petition signed with the corporate name, stating the name and charter of the corporation, when incorporated, giving the date of the original act of incorporation and all amendments thereto, that it desires a renewal of its charter as set out in the original act of incorporation and the acts amendatory thereof, and paying to the secretary of State a fee of one hundred dollars, to be



Renewal and amendment of charters — Acts of December 20, 1893.

covered by him into the treasury of the State, and filing along with said petition a certified abstract from the minutes of the corporation, showing that the application for renewal had been authorized by proper corporate action. Thereupon the secretary of State shall issue to the petitioning corporation the following certificate, to wit: "Georgia. To whom it may concern, greeting: (insert name of petitioning corporation), a corporation created by an act of the general assembly of the State of Georgia, by an act approved (insert date of approval of act of incorporation, and acts amendatory thereof, approved (insert date of approval amending acts), having petitioned for a renewal of the charter of said corporation in terms of the statute in such case made and provided, the grant of corporate powers and privileges set out in the above recited acts is hereby renewed for the space of thirty years, as to all parts thereof not in conflict with the Constitution and laws now or hereafter of force in this State. Witness my official hand and the seal of the State, this ..... day of ..... 18..."

§ 2. Be it further enacted, That upon the filing of the petition and abstract, and the issuance of the certificate prescribed in the foregoing section of this act, the corporation shall be conclusively presumed to have accepted the renewal of its charter, and said corporation shall be, and continue for the space of thirty years, a body corporate, with all the powers, privileges and liabilities as granted in the original act of incorporation and the amendments thereto, so far as the same are not in conflict with the Constitution and laws of the State, now or hereafter of force.

§ 3. Be it further enacted, That the secretary of State shall keep of file the petitions and abstracts specified in the first section of this act, and shall keep a book in which he shall enter the names of all corporations obtaining renewals of charters under this act, and the date of the renewal.

§ 4. Be it further enacted, That all laws and parts of laws in conflict herewith be, and the same are, hereby repealed.

(Approved December 20, 1893.)

Act 9.

AN ACT to provide for the grant of corporate powers and privileges by amendment to the charters heretofore granted by special acts of the general assembly to banking, insurance, railroad, canal, navigation, express and telegraph companies.

Section 1. Be it enacted by the general assembly of Georgia, That any banking, insurance, railroad, canal, navigation, express or telegraph company, heretofore incorporated by the general assembly by

special act, may amend its charter so as to acquire any or all of the corporate powers and privileges granted to a like corporation under the acts already or to be hereafter passed, providing for the grant of corporate powers and privileges to such companies by the secretary of State, by filing with the secretary of State a petition, signed with the corporate name, stating the name and character of the corporation, the date of the original act of incorporation and all amendments thereto, that it desires an amendment to its charter by having granted it the corporate powers and privileges granted to similar corporations by the act, or certain specified sections of the act, providing for the grant of corporate powers and privileges to (insert kind of company) by the secretary of State, and paying to the secretary of State a fee of twenty-five dollars, to be covered by him into the treasury of the State, and also filing along with said petition a certified abstract from the minutes of the corporation, showing that the application for amendment had been authorized by proper corporate action. Thereupon the secretary of State shall issue to the corporation the following certificate: "Georgia. To whom it may concern, greeting: (insert here name of petitioning corporation), a corporation created by an act of the general assembly of this State by an act approved (insert here date of approval of act), and acts amendatory thereof, approved (insert here date of approval of amendatory acts), having petitioned for an amendment of the charter of said corporation, in terms of the law in such case made and provided, the corporate powers and privileges set out in the act, or certain specified sections of the act, providing for the grant of corporate powers and privileges by the secretary to (insert charter of company), are hereby conferred upon (insert name of company desiring amendment). Witness my hand and the seal of this State, this ..... day of ..... 18..."

§ 2. Be it further enacted, That after the filing of said petition, and the issuance of the certificate prescribed in the foregoing section, the corporation shall be conclusively presumed to have accepted the amendment specified, and shall have, enjoy and exercise all the corporate powers and privileges set out in the act, or the particular section of the act specified in the petition, and certificate prescribed in the first section of this act.

§ 3. Be it further enacted, That the secretary shall keep of file all petitions and transcripts filed with him under the provisions of the first section of this act, and shall also keep a book in which he shall enter the names of all the companies obtaining the amendments to charters under this act, the date of the amendment and the act, or portions of the act, adopted as an amendment.

Assignments; liability of stockholders — Acts of December 13, December 14, 1894.

§ 4. Be it further enacted That all laws and parts of laws in conflict with this act be, and the same are, hereby repealed.  
(Approved December 20, 1893.)

#### Act 10.

AN ACT to regulate the law of assignments for the benefit of creditors, etc.

Section 1. Be it enacted by the general assembly of the State of Georgia, and it is hereby enacted by authority of the same, That any corporation, not municipal, may make an assignment for the benefit of creditors, but no such corporation shall be allowed to prefer any creditor or class of creditors, except such as have debts entitled to priority by the laws of this State.

§ 6. Be it further enacted, That at the time of signing said deed of assignment, \* \* \* the officer acting for the corporation making an assignment, shall make an affidavit annexed to such assignment, that "the said assignment conveys all property held, claimed, or owned by the assignor at the time of making the assignment; that all recitals and all estimates of totals and values therein and all list creditors are true to the best of his knowledge and belief; and that the debts set out as due to the preferred creditors are, bona fide, just, due, and unpaid; and that said assignment is not made for the purpose of hindering, delaying, or defrauding creditors."

§ 9. Be it further enacted, That no property in this State shall pass under any assignment made by corporations, persons, or firms out of this State, unless such foreign assignment shall comply with the law of assignments in this State.

(Approved December 13, 1894.)

#### Act 11.

AN ACT to provide in what manner stockholders in banks and other corporations having individual liability shall be relieved of the same, etc.

Section 1. Be it enacted by the general assembly of the State of Georgia, and it is hereby enacted by authority of the same, That from and after the passage of this act, whenever a stockholder in any bank or other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability by such transfer, unless such bank or other corporation shall fail within six months from the date of such transfer.

§ 2. Be it further enacted, That the stockholders in whose names the capital stock stands upon the books of such bank or other corporation at the date of its failure shall be primarily liable to respond upon such individual liability; but upon proof made that any of said shareholders at the date of the failure are insolvent, recourse may be had against the person or persons from

whom such insolvent shareholder received his stock, if within a period of six months prior to the date of the failure of such bank or other corporation.

§ 3. Be it further enacted, That such individual liability shall be an asset of such bank or other corporation, to be enforced by the assignee, receiver, or other officer having the legal right to collect, marshal and distribute the assets of such failed bank or other corporation.

§ 4. Be it further enacted by the authority aforesaid, That all banks and other corporations, whose shareholders are individually liable under their charter, shall keep on hand at all times a true and correct list of the shareholders of such bank or other corporation, and it shall be the right of any creditor of such bank or other corporation to inspect the same at any time during the business hours of any working day, and it is hereby made the duty of the president and other officers of the bank or other corporation to produce such lists, from time to time, as may be required by any creditor of said bank or other corporation.

§ 5. Be it further enacted by the authority aforesaid, That the president and other officers of such bank or other corporation in charge of its business at the time such demand is made by any creditor to inspect the list of shareholders, who shall fail or refuse, upon such demand made by any creditor of said bank or corporation within the business hours of any working day, to permit such creditor to inspect such list of shareholders, shall be guilty of a misdemeanor, and, upon conviction by any court having jurisdiction of the same, shall be punished as prescribed in section 4310 of the Code of Georgia.

§ 6. Be it further enacted, That all laws and parts of laws in conflict with this law be, and the same are, hereby repealed.  
(Approved December 18, 1894.)

#### Act 12.

AN ACT to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations, made with a view to lessen or which tend to lessen, free competition in the importation or sale of articles imported into this State; or in the manufacture or sale of articles of domestic growth or of domestic raw material; to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or articles; to provide for forfeiture of the charter and franchise of any corporation, organized under the laws of this State, violating any of the provisions of this act; to prohibit every foreign corporation, violating any of the provisions of this act, from doing business in

Trusts and combines; sale of franchise — Acts, December 23, 1896; December 21, 1897.

this State; to require the attorney-general of this State to institute legal proceedings against any such corporations violating the provisions of this act, and to enforce the penalties prescribed; to prescribe penalties for any violation of this act; to authorize any person or corporation, damaged by any such trust, agreement, or combination, to sue for the recovery of such damages, and for other purposes.

Section 1. Be it enacted by the general assembly of Georgia, and it is hereby enacted by the authority of the same, That from and after the passage of this act all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view to lessen, or which tend to lessen full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. Be it further enacted by the authority aforesaid, That any corporation, chartered under the laws of this State, which shall violate any of the provisions of this act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provisions of this act is hereby denied the right to do, and is prohibited from doing business in this State. It is hereby made the duty of the attorney-general of this State to enforce this provision by due process of law.

§ 3. Be it further enacted by the authority aforesaid, That any violation of the provisions of this act shall be deemed, and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall on conviction, be punished by a fine of not less than one hundred dollars or more than five hundred dollars, and by imprisonment in the penitentiary not less than one year or nor more than ten years; or, in the judgment of the court, by either such fine or such imprisonment.

§ 4. Be it further enacted by the authority aforesaid, That the provisions of this act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

§ 5. Be it further enacted by the authority aforesaid, That any person or persons, or

corporations, that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section one of this act may sue for and recover in any court of competent jurisdiction in this State, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles, the sale of which is controlled by such combination or trust.

§ 6. Be it further enacted by the authority aforesaid, That it shall be the duty of the judges of the superior courts of this State specially to instruct the grand juries as to the provisions of this act.

§ 7. Be it further enacted by the authority aforesaid, That all laws and parts of laws in conflict with the provisions of this act be, and the same are, hereby repealed.

(Approved December 23, 1896.)

### Act 13.

AN ACT authorizing a judicial sale of the franchises of insolvent private corporations, providing for the incorporation of the purchaser or purchasers of such franchise, and for other purposes.

Section 1. Be it enacted by the general assembly of the State of Georgia, That whenever any private corporation heretofore or hereafter created under any general or special law of this State shall become insolvent, and its assets be the subject of administration by the court, the franchises possessed and enjoyed by such corporation in virtue of its charter or order of incorporation shall be considered assets, and the same may be sold, under order of the court, through a receiver or otherwise.

§ 2. Be it further enacted, That the purchaser or purchasers of such franchises, their associates, successors and assigns, shall, upon complying with the requirements of this act, have and acquire, and may thereafter exercise and enjoy the same rights, privileges, immunities and advantages conferred in the charter or order of incorporation of such insolvent corporation, as fully and absolutely, in all respects, as the former company might or could have had and enjoyed the same had no such sale and purchase taken place; Provided, That nothing in this act shall be construed to reserve to such purchaser or purchasers any exemption from State, county or municipal taxation, or any special rights, privileges or immunities, inconsistent with the constitution of this State.

§ 3. Be it further enacted, That such purchasers, their associates and assigns, may organize anew in the manner prescribed by law.

§ 4. Be it further enacted, That all laws and parts of laws in conflict with this act be, and the same are, hereby repealed.

(Approved December 21, 1897.)



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IDAHO.

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# IDAHO.

## CONSTITUTION OF IDAHO—1889.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Declaration of Rights.

Sec. 16. Laws impairing obligation of contracts not to be passed.

#### ARTICLE III.

##### Legislative Department.

Sec. 19. Local or special laws not to be passed in certain cases.

#### ARTICLE VII.

##### Revenue.

Sec. 2. Corporations to be taxed.

8. Power to tax corporations shall never be relinquished.

#### ARTICLE VIII.

##### Public Indebtedness and Subsidies.

Sec. 2. State not to loan its credit to, or become a stockholder in any corporation.

#### ARTICLE XI.

##### Corporations.

- Sec. 1. Charters under which corporations not organized at adoption hereof shall have no validity.
2. Corporations must hereafter be created under general laws.
3. Legislature may alter, revoke or annul any charter.
4. Election of directors, how to be conducted.
5. Railroads shall be highways. Transportation companies shall be common carriers. Rates may be regulated. Railroads may connect with or cross others.
6. Unreasonable discrimination in facilities or rates by common carriers prohibited.
7. Existing corporations may have benefit of future legislation, how.
8. Right of eminent domain, or police power of the State, not to be abridged.
9. Stocks or bonds not to be issued except for value actually received. Ejectitious increase of stock or indebtedness void.
10. Foreign corporation may do business in this State upon certain conditions.
11. No street or other railroad to be constructed within municipality without consent of local authorities.
12. Restrictions upon laws for benefit of corporations.
13. Telegraph or telephone lines may be constructed subject to reasonable regulations.
14. Consolidation of domestic with foreign corporation does not constitute foreign corporation.
15. Legislature shall not permit alienation of franchises so as to release liabilities.
16. Term "corporation" construed.
17. Personal liability of stockholders.
18. Trusts and combinations prohibited.

#### ARTICLE I.

##### Declaration of Rights.

§ 16. No \* \* \* law impairing the obligation of contracts, shall ever be passed.

See Const., art. XI, § 3. No retroactive law shall be passed. Id., § 12.

#### ARTICLE III.

##### Legislative Department.

§ 19. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

31. Creating any corporation.

See Const., art. XI, § 2; Gen. L., § 2575 et seq.

#### ARTICLE VII.

##### Revenue.

§ 2. The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided. The legislature may also impose a license tax (both upon natural persons and upon corporations, other than municipal, doing business in this State); also a per capita tax: Provided, The legislature may exempt a limited amount of improvements upon land from taxation.

See § 1401 et seq.

§ 8. The power to tax corporations or corporate property, both real and personal, shall never be relinquished or suspended, and all corporations in this State or doing business therein, shall be subject to taxation for State, county, school, municipal, and other purposes, on real and personal property owned or used by them, and not by this Constitution exempted from taxation within the territorial limits of the authority levying the tax.

See § 1401 et seq.

#### ARTICLE VIII.

##### Public Indebtedness and Subsidies.

§ 2. The credit of the State shall not, in any manner, be given, or loaned to, or in aid

of any individual, association, municipality or corporation: nor shall the State directly or indirectly, become a stockholder in any association or corporation.

## ARTICLE XI.

### Corporations.

§ 1. All existing charters or grants of special or exclusive privileges, under which the corporators or grantees shall not have organized or commenced business in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

§ 2. No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be, under the control of the State; but the legislature shall provide by general law for the organization of corporations hereafter to be created: Provided, That any such general law shall be subject to future repeal or alteration by the legislature.

See § 2575 et seq.; Const., art. III, § 19.

[Certain conditions in legislative charter held not to be conditions precedent to corporate existence. *Canal Co. v. Pinkham*, 1 Idaho, 790 (1889).]

§ 3. The legislature may provide by law for altering, revoking, or annulling any charter of incorporation existing and revocable at the time of the adoption of this Constitution, in such manner, however, that no injustice shall be done to the corporators.

See Const., art. I, § 16, and Gen. L., § 2641. Proceedings against corporations. §§ 8222-8229. Voluntary dissolution. §§ 5185-5191.

§ 4. The legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock, shall equal, or to distribute, them on the same principle among as many candidates as he shall think fit, and such directors shall not be elected in any other manner.

See § 2594.

§ 5. All railroads shall be public highways, and all railroad, transportation, and express companies shall be common carriers, and subject to legislative control, and the legislature shall have power to regulate and control by law, the rates of charges for the transportation of passengers and freight by such companies or other common carriers from one point to another in the State. Any

association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this State, and to connect within or at the State line with railroads of other States and territories. Every railroad company shall have the right with its road, to intersect, connect with, or cross any other railroad, under such regulations as may be prescribed by law, and upon making due compensation.

§ 6. All individuals, associations, and corporations, similarly situated shall have equal rights to have persons or property transported on or over any railroad, transportation, or express route in this State, except that preference may be given to perishable property. No undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class, by any railroad, or transportation, or express company, between persons or places within the State; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad, or transportation, or express company shall be allowed to charge, collect or receive, under penalties which the legislature shall prescribe, any greater charge or toll for the transportation of freight or passengers, to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this State. No railroad, express or transportation company, nor any lessee, manager, or other employee thereof, shall give any preference to any individual, association, or corporation, in furnishing cars or motive power or for the transportation of money or other express matter.

§ 7. No corporation other than municipal corporations in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of State an acceptance of the provisions of this Constitution in binding form.

§ 8. The right of eminent domain shall never be abridged, or so construed as to prevent the legislature from taking the property and franchise of incorporated companies, and subjecting them to public use, the same as property of individuals; and the police powers of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.

§ 9. No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the

consent of the persons, holding a majority of the stock, first obtained at a meeting, held after at least thirty days' notice given in pursuance of law.

§ 10. No foreign corporation shall do any business in this State without having one or more known places of business, and, an authorized agent or agents in the same, upon whom process may be served, and no company or corporation formed under the laws of any other country, State, or territory, shall have or be allowed to exercise or enjoy, within this State any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this State.

See § 2653.

§ 11. No street, or other railroad, shall be constructed within any city, town, or incorporated village without the consent of the local authorities having the control of the street or highway proposed to be occupied by such street or other railroad.

§ 12. The legislature shall pass no law for the benefit of a railroad, or other corporation, or any individual or association of individuals retroactive in its operation, or which imposes on the people of any county or municipal subdivision of the State, a new liability in respect to transactions or considerations already past.

See Const., art. I, § 16.

§ 13. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this State, and connect the same with other lines; and the legislature shall by general law of uniform operation provide reasonable regulations to give full effect to this section.

§ 14. If any railroad, telegraph, express, or other corporation, organized under any of the laws of this State shall consolidate by sale

or otherwise with any railroad, telegraph, express, or other corporation organized under any of the laws of any other State or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State in all matters that may arise, as if said consolidation had not taken place.

§ 15. The legislature shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

§ 16. The term "corporation" as used in this article, shall be held and construed to include all associations and joint-stock companies having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships.

See Gen. L., § 2575.

§ 17. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him.

§ 18. That no incorporated company, or any association of persons or stock company, in the State of Idaho, shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders or the trustees or assignees of such stockholders, or in any manner whatsoever, for the purpose of fixing the price or regulating the production of any article of commerce or of produce of the soil, or of consumption by the people; and that the legislature be required to pass laws for the enforcement thereof, by adequate penalties, to the extent, if necessary for that purpose, of the forfeiture of their property and franchise.

Public officers; highways; revenue — R. S., §§ 180, 191, 196, 901, 1401, 1429, 1440, 1442.

## REVISED STATUTES OF IDAHO -- 1887.\*

### GENERAL PROVISIONS APPLICABLE TO ALL THE CODES.

Sec. 16. Certain terms defined.

§ 16. \* \* \* The word person includes a corporation as well as a natural person;  
\* \* \* \* \*

See § 6301.

#### Part First. Political Code.

#### TITLE I. PUBLIC OFFICERS.

##### CHAPTER V.

##### Of the Governor.

Sec. 180. Powers and duties of governor.

§ 180. In addition to those prescribed by the congress the governor has the power, and may perform the duties prescribed in this and the following sections:

6. He may require the attorney-general, or district attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this territory.

##### CHAPTER VI.

##### Of the Secretary of the Territory.

Sec. 191. Duties.  
196. Fees.

§ 191. It is the duty of the secretary of the territory:

3. To record in proper books all \* \* \* articles of incorporation filed in his office.

§ 196. The secretary of the territory, for services performed in his office, may charge and collect the following fees:

3. For filing articles of incorporation, five dollars.

4. For recording articles of incorporation, twenty cents per folio.

5. For issuing each certificate of incorporation, three dollars.

#### TITLE VI. PUBLIC WAYS.

##### CHAPTER II.

##### Highways.

##### ARTICLE V.

Sec. 901. Employer responsible for highway labor assessed to employes.

§ 901. Corporations or other employers of residents in any highway district, are re-

sponsible for the road poll-tax assessed against their employes, and a notice to the employer or managing agent requiring the payment of the road poll-tax of the employe, charges such employer or corporation with such road poll-tax.

#### TITLE X. REVENUE.

##### CHAPTER I.

##### Property Liable to Taxation.

Sec. 1401. Property exempt from taxation.

§ 1401. The following property is exempt from taxation:

Sixth. Capital stock of corporations where the property of the corporation has been assessed;

##### CHAPTER IV.

##### Assessment of Property.

Sec. 1429. Assessor to require statement containing what.

1440. Holders of stock in firm or corporation.

1442. Property of firm or corporation assessed, where situated.

§ 1429. (As amended March 9, 1895.) He (the assessor) must exact from each person a statement, under oath, setting forth specifically all the real and personal property owned by such person, or in his possession or under his control at twelve o'clock, M., on the second Monday in April and as to property not within the State on that day, on the day of the assessment. Such statement shall be in writing, showing separately:

3. All property belonging to, claimed by, or in the possession, or under the control or management of any corporation of which such person is president, secretary, cashier or managing agent.

§ 1440. The owner or holder in any firm or corporation, the entire capital or property whereof is assessed, must not be assessed individually for his stock in such firm or corporation.

§ 1442. The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

(Note.— The Revised Statutes of 1887 of the Territory of Idaho are still in force in the State of Idaho, except as amended by legislative enactments.)

Definitions: articles of incorporation — R. S., §§ 2575-2580.

## Part Second. Civil Code.

## TITLE IV. CONCERNING CORPORATIONS.

## CHAPTER I.

## General Provisions.

- Sec. 2575. Corporations, public or private.  
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Sec. 2550. Existing corporations may continue under this title.

2651. Same.

2652. Application of this chapter.

2653. Foreign corporations to designate person upon whom service may be made.

§ 2575. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the territory; all other corporations are private.

"Corporation" defined. Const., art. XI, § 16.

§ 2576. Private corporations may be formed by the voluntary association of any five or more persons in the manner prescribed in this title. A majority of such persons must be bona fide residents of this territory.

§ 2577. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves.

How corporation formed prior to adoption of constitution may have benefit of future legislation. Const., art. XI, § 7.

§ 2578. The instrument by which a private corporation is formed, is called "Articles of Incorporation."

§ 2579. Articles of incorporation must be prepared, setting forth:

First. The name of the corporation;

Second. The purpose for which it is formed;

Third. The place where its principal business is to be transacted;

Fourth. The term for which it is to exist, not exceeding fifty years;

Fifth. The number of its directors or trustees; and the names and residence of those who are appointed for the first year: Provided. At any time during the existence of the corporation, the number of the directors may be increased, in corporations for profit, by a majority of the stockholders of the corporations, to any number not exceeding eleven, who must be members of the corporation, whereupon a certificate, stating the number of directors, must be filed, as provided for the filing of original articles of incorporations;

Sixth. The amount of the capital stock, and the number of shares into which it is divided;

Seventh. If there is a capital stock, the amount actually subscribed, and by whom.

See Const., art. XI, § 9.

§ 2580. The articles of incorporation of any railroad, wagon road or telegraph organization must also state:

First. The kind of road or telegraph intended to be constructed:

Second. The place from and to which it is intended to be run, and all the intermediate branches;

Third. The estimated length of the road or telegraph line.

§ 2581. The articles of incorporation must be subscribed by five or more persons, a majority of whom must be resident freeholders of this territory, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

§ 2582. Each intended railroad, wagon road or telegraph corporation, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amount, to wit:

First. One thousand dollars per mile of railroads;

Second. One hundred dollars per mile of telegraph lines;

Third. Three hundred dollars per mile of wagon roads.

§ 2583. Before the secretary of the territory or the recorder of the county issues to any such corporation a certificate of the filing of articles of incorporations, there must be filed in his office an affidavit of the president, secretary or treasurer named in the articles that the amount of the capital stock thereof required by law has been actually subscribed.

§ 2584. Upon filing the articles of incorporation in the office of the county recorder of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county recorder, with the secretary of the territory, and filing the affidavit mentioned in the last section, when such affidavit is required, the secretary of the territory or such county recorder must issue to the corporation, over his official seal, a certificate that a copy of the articles, containing the required statement of facts, has been filed in his office; and thereupon the persons executing the articles and their associates and successors shall be a body politic and corporate, by the name stated in the articles, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated, or by law otherwise specially provided.

[Defects in organization cannot be taken advantage of in a collateral proceeding, but only in direct proceedings by the State. Canal Co. v. Pinkham, 1 Idaho, 790.]

§ 2585. A copy of any articles of incorporation filed in pursuance to this title and certified by the secretary of the territory, or the recorder of the proper county, must be received in all courts and other places as prima facie evidence of the facts therein stated.

§ 2586. The owners of shares in a corporation which has a capital stock, are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

§ 2587. No corporation formed under the provisions of this title, shall purchase, lo-

cate, or hold, property in any county of this territory, without filing a certified copy of its articles of incorporation in the office of the county recorder of the county in which such property is situated, within sixty days after such purchase or location is made, and every corporation now in existence must, within ninety days after the passage of this title, file a certified copy of its articles of incorporation, as provided in this section. Any corporation failing to comply with the provisions of this section, must not, while so in default, maintain or defend any action or proceeding in relation to such property.

§ 2588. Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the laws of congress and of this territory. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and if such meeting be called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or, if none be published therein, then in a paper published at the capital of the territory, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock subscribed, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

§ 2589. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of the election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as prescribed in the last preceding section.

§ 2590. A corporation may, by its by-laws, where no other provision is specially made, provide, among other things, for:

First. The time, place, and manner of calling and conducting its meetings;

Second. The number of stockholders or members constituting a quorum;

Third. The mode of voting by proxy;

Fourth. The time of the annual elections of directors, and the mode and manner of giving notice thereof;

Fifth. The duties and compensation of officers;

Sixth. The manner of election, and the terms of office of all officers other than the directors; and

Seventh. Suitable penalties for violation of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

§ 2591. All by-laws adopted must be certified by a majority of the directors and the secretary of the corporation, and copied in

a legible hand in some book kept in the principal office of the corporation in this territory, to be known as the "Book of By-laws," and no by-law shall take effect until so copied, and the book shall be open to the inspection of the public during office hours of each day, except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting of the stockholders or members called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or two-thirds of the members when there is no capital stock, or the power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, be delegated to the board of directors. This power, when so delegated, may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, must be stated in the said book, and until so stated the repeal must not take effect.

§ 2592. The corporate powers, business and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than five nor more than eleven directors, to be elected from among the holders of stock, or when there is no capital stock, then from among the members of such corporation. A majority of the directors must be, in all cases, citizens and actual bona fide residents within this territory. Directors of corporations for profit must be holders of stock therein, in an amount to be fixed by the by-laws. Directors of all other corporations must be members thereof. Unless a majority is present and acting, no business performed or act done by the board of directors is valid as against the corporation. Whenever a vacancy occurs in the office of directors, unless otherwise provided by the by-laws, such vacancy must be filled by the board.

[The president and secretary of a mining corporation cannot appoint an attorney in fact to sell the property without authority from the directors. *Johnson v. Sage*, 44 Pac. Rep. 641.]

§ 2593. At the first meeting at which the by-laws are adopted, or at such subsequent meeting as may be then designated, directors must be elected, to hold their offices for one year, and until their successors are elected and qualified.

§ 2594. All elections of directors must be by ballot, and a vote of stockholders representing a majority of the subscribed capital stock, or of a majority of the members, if

there be no capital stock, is necessary to a choice. If there be capital stock in the corporation, each stockholder is entitled to one vote for each share held by him at all such elections, and at all elections at other meetings of stockholders.

See Const., art. XI, § 4. Directors to be elected annually. § 2589.

§ 2595. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and a treasurer. They must perform the duties enjoined on them by law and by the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is a valid corporate act, as though made by a majority of all the directors of the corporation.

§ 2596. The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they reduce or increase the capital stock, except as in this title specially provided. For a violation of the provisions of this section, the directors, under whose administration the same may have occurred, (except those who may have caused their dissent therefrom to be entered at large on the minutes of directors at the time, or, when not present, when the same did occur) are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

Violation of above provision is also a misdemeanor. § 7117.

§ 2597. No director can be removed from office unless by a vote of the stockholders holding two-thirds of the capital stock, or of two-thirds of the members, where there is no capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders or members for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing and addressed to the secretary, who must, thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the sec-

retary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 2588 of this title, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

§ 2598. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the stockholders, or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a secretary is chosen and qualified, if there is no officer present legally authorized to preside thereat.

§ 2599. At all elections or votes had for any purpose, there must be a majority of the subscribed capital stock, or of the members, when there is no capital stock, represented either in person, or by proxy, in writing. Every person acting therein in person, or by proxy, or by representative, must be a member thereof, or a bona fide stockholder, having stock in his own name on the stock-books of the corporation, at least ten days prior to the election. Any vote or election had otherwise than in accordance with the provisions of this title, is voidable at the instance of absent stockholders or members and may be set aside by petition to the district court of the county where the same was held or to the judge of said court at his chambers. Any regular or call meeting of the stockholders or members may adjourn from day to day, or from time to time, if from any reason there is not present a majority of the subscribed stock or members, or no election or majority vote had. Such adjournment and reasons thereof being recorded in the journal of proceedings of the board of directors.

§ 2600. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and if a deceased person by his executor or administrator.

§ 2601. If from any cause an election does not take place on the day appointed in the by-law, it may be held on any day thereafter, as may be provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered, a meeting may be called by the stockholders, as provided in section 2597 of this title.

§ 2602. Upon the application of any per-

son, or body corporate, aggrieved by any election held by any corporate body, or any proceedings relating to any such election, the district judge of the district in which such election is held, must proceed forthwith summarily to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Before the proceedings are had under this section, five days' notice thereof must be given to the adverse party, or to those to be affected thereby, if found within the territory.

§ 2603. Any officer of a corporation, who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records of the books of the corporation, concerning the corporation or its business, which is false in any material representation, is liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they are jointly and severally so liable.

§ 2604. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if at a meeting legally called and notified.

§ 2605. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

§ 2606. The meetings of the stockholders, members and board of directors of a corporation must be held at its office, or principal place of business.

§ 2607. When no provision is made in the by-laws for regular meetings of the directors, and the mode of calling special meetings, all meetings must be called by special notice in writing; to be given by the secretary to each director, if within the territory, on the order of the president, or if there be none, on the order of two directors.

§ 2608. Every corporation that has been or may be created under the general laws of this territory may change its principal place of business from one place to another within this territory. Before such change is made, the consent, in writing, of the holders of two-thirds of the capital stock, or of two-thirds of the members, when there is no capital stock, must be obtained and filed, notice of such intended removal or change must be published, at least once a week, for three successive weeks, as provided in section 2588, giving the name of the county where it is situated, and that to which it is intended to remove.



§ 2609. (As amended March 11, 1891.) Each stockholder of a corporation is individually and personally liable for its debts and liabilities to the full amount unpaid upon the par or face value of the stock or shares owned by him. Any creditor of the corporation may institute actions against any of its stockholders jointly or severally, and in such action the court must determine the amount unpaid upon the stock held or owned by each defendant, and a several judgment must be entered against him for a sum not exceeding such amount; and nothing in this title must be construed to render any stockholder individually or personally liable, as such stockholder, for debts or liabilities of the corporation, either at the suit of a creditor or for assessments or calls, to an amount exceeding the balance unpaid upon his stock, or the difference between the amount that has been actually paid upon his stock and the par or face value thereof, except when so liable on the ground of fraud or misrepresentation, or concealment, or for neglect or misconduct as an officer, agent, stockholder, or member of the corporation; and no corporation shall issue any stock as paid up, in whole or in part, or credit any amount, assessment or call as paid upon any of its stock, except for money, property, labor or services actually received by the corporation, or actually paid upon the indebtedness of the corporation as provided in this section, to the full value of the amount credited upon such stock. If any stockholder of any insolvent corporation pays the full amount unpaid upon the stock held by him, as above defined, upon the overdue debts of the corporation, incurred while he was such stockholder, he is relieved from any further personal liability upon his stock, but not from any liability for fraud, neglect or misconduct. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred by the corporation; and such liability is not released or discharged by any subsequent transfer of stock. When such liability does not arise upon contract it shall be deemed to be incurred when judgment therefor is obtained against the corporation. The term stockholder, as used in this section, applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and, also, to every person who has advanced the installments or purchase money, or subscribed for stock, in the name of a minor, so long as the latter remains a minor; and, also, to every guardian or trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee are not liable under the provisions of this section, by reason of any such investment; nor is the person for

whose benefit such investment is made responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period, or while the investment continues. Stock held as collateral security, or by a trustee who is not the beneficial owner, or in any other representative capacity without a beneficial interest, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation, but the pledgor, or person, or estate represented is to be deemed the stockholder, as respects such liability. Members of corporations not organized for profit and having no capital stock are not individually or personally liable for its debts or liabilities, unless such liabilities imposed by the by-laws of the corporation and then only to the extent so imposed; any such liability may be enforced, to the extent imposed by the by-laws, by joint or several actions against members, as before provided. The liability of each stockholder of a corporation not formed under the laws of this State, but doing business within the State, is the same as the liability of stockholders of corporations organized under the laws of this State.

§ 2. That all corporations doing business in this State, whether organized under the laws of this State, or some other State, desiring to avail themselves of the provisions of this act, shall cause to be written or printed after the corporate name, on its stock certificates, letter and bill heads, and all its official documents the word "limited;" also after the corporate signature to all official or public documents the word "limited."

[Above section construed. *Sparks v. Ditch Co.*, 2 Idaho, 1030; s. c., 29 Pac. Rep. 134; *Jones v. Woolley*, 2 Idaho, 799; s. c., 26 Pac. Rep. 120.]

§ 2610. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

§ 2611. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by endorsement by the signature of the proprietor, or his attorney, or legal representative, and delivery of the certificate; but such transfer is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the name of the parties by and to whom transferred, the number and designation of the shares, and the date of

the entry. Corporations may, by by-laws, provide that no transfer of its stock shall be made upon its books until all indebtedness to the corporation of the person in whose name the stock stands, whether for assessments, calls, or otherwise is paid.

[A transfer of stock under provisions of above section is not valid, except as between the parties, until entered upon corporation books in conformity therewith. *Aulbach v. Dahter*, 43 Pac. Rep. 322.]

§ 2612. Shares of stock in corporations, held or owned by a married woman, may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a feme sole. All dividends payable upon any shares of stock of a corporation held by a married woman, may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman touching any shares of stock of any corporation, owned by her, is valid and binding without the signature of her husband, the same as if she were unmarried.

§ 2613. When shares of stock in a corporation are owned by a non-resident of the territory, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing certificate therefor to the transferee, may require satisfactory evidence that the non-resident owner was alive at the date of the transfer, and if such satisfactory evidence be not furnished, may require a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or approved by the judge of the district court of the district in which the principal office of the corporation is situate, conditioned to protect the corporation against any liability to the heirs or legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof is liable for refusing to enter the transfer on the books of the corporation.

§ 2614. The directors of any corporation formed or existing under the laws of this territory, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent herein provided.

[Corporation organized for irrigation purposes held authorized to make assessments on paid-up stock. *Hall v. Water Co.*, 51 Pac. Rep. 110.]

§ 2615. No one assessment must exceed

ten per cent, of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided as follows:

First. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount;

Second. The directors of railroad corporations may assess the capital stock in installments of not more than ten per centum per month, unless in the articles of incorporation it is otherwise provided;

Third. The directors of fire insurance corporations may assess such a percentage of the capital stock as they deem proper.

§ 2616. No assessment must be levied while any portion of a previous one remains unpaid, unless:

First. The power of the corporation has been exercised in accordance with the provisions of this title for the purpose of collecting such previous assessment;

Second. The collection of the previous assessment has been enjoined; or,

Third. The assessment falls within the provisions of one of the subdivisions of the last preceding section.

§ 2617. The order levying the assessment must specify the amount thereof, when, to whom and where payable; fix the day subsequent to the full term of publication of the assessment notice, on which the unpaid assessments will be delinquent, not less than thirty or more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

§ 2618. Upon the making of the order the secretary must cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given that at a meeting of the directors held on the (date) an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where) any stock upon which this assessment remains unpaid on the (day fixed) will be delinquent, and advertised for sale at public auction, and unless payment is made before, will be sold on the (day appointed) to pay the delinquent assessment, together with costs of advertising and expenses of sale. (Signature of secretary with the location of office.)

§ 2619. The notice must be published once a week, for four successive weeks, in some newspaper of general circulation published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published

in the county in which the works of the corporation are situated, if situated in a different county and a paper be published therein. If there be no newspaper published in the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published at the capital of the territory.

§ 2620. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice heretofore provided for has been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.)

Notice:—There is delinquent upon the following described stock on account of assessment levied on the (date), (and assessments previous thereto, if any), the several amounts set opposite the names of the respective shareholders as follows: (names, number of certificate, number of shares, amount.) And in accordance with law, so many shares of each parcel of such stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with the cost of advertising and expenses of the sale. (Name of secretary, with location of office.)

§ 2621. The notice must specify every certificate of stock, the number of shares it represents and the amount due thereon, except when certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon must be stated.

§ 2622. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and legal holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

§ 2623. By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale, upon which any portion of the assessment or cost of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of advertising and sale.

§ 2624. On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the board of directors, sell, or cause to be sold at public auction to the highest bidder, for cash, so many shares of each parcel of the

described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

§ 2625. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share, is the highest bidder, and the stock purchased must be transferred to him on the stock-books of the corporation on payment of the assessments and costs.

§ 2626. If at the sale of stock, no bidder offers the amount of the assessment and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president or any director thereof, at the amount of the assessment, charges and costs due; and said amount must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation made. While the stock remains the property of the corporation it is not assessable, nor must any dividend be declared thereon, but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

§ 2627. All purchases of its own stock made by any corporation, vests the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit in accordance with the by-laws, on vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation, it shall not be voted upon, but a majority of the remaining shares is a majority of the stock for all purposes of election or voting.

§ 2628. The dates fixed in any notice of assessment or notice of delinquent sale, published as aforesaid, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no such order is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

§ 2629. No assessment is invalidated by a failure to make publication of the notices, nor by the nonperformance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings except the levying of assessment, are void, and publication must begin anew.

§ 2630. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment; irregularity or defect in the notice of sale or in its publication; or defect or irregularity in the sale; unless the party seeking to maintain such action first pays

or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid or may be due thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced within six months after such sale was made.

§ 2631. The publication of notice required by this title may be proved by the affidavit of the printer, publisher, foreman or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. Such affidavit must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates of files and records of the corporation in his office, signed by the secretary, and under the seal of the corporation, are prima facie evidence of their contents.

§ 2632. On the day specified for declaring the stock delinquent, or at any time subsequent thereto, and before the sale, the board of directors may elect to waive further proceedings by sale, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

§ 2633. Every corporation, as such, has power:

First. Of succession, by its corporate name, for the period limited; and when no period is limited, perpetually;

Second. To sue and be sued, in any court, as a natural person may;

Third. To make and use a common seal, and alter the same at pleasure;

Fourth. To purchase, hold and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited by this title;

Fifth. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;

Sixth. To make by-laws not inconsistent with any existing law, for the management of its business and property, the regulation of its affairs, and for the transfer of its stock;

Seventh. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments;

Eighth. To enter into any contracts or obligations essential, necessary or proper to the transaction of its ordinary affairs, or for the purposes of the corporation.

Corporate seal may be an impression upon paper merely. R. S., §§ 13, 3226. Counterfeiting or

forging corporate seal is a felony. R. S., § 730. By-laws may provide what. § 2590. Adoption and amendment of by-laws. § 2591. How much land may be held. § 2638. Certain corporations prohibited from holding land in Idaho. See Act of 1891, at p. 23. Proceedings against corporations. §§ 8222–8229. Service of summons on corporation. §§ 4144–4145. Pleading. § 4199. Execution and levy upon franchise. § 2642 et seq.

[In a suit against a private corporation the complaint is fatally defective unless it contains unequivocal averment that it is a corporation. *Miller v. Min. Co.*, 2 Idaho, 1206; s. c., 31 Pac. Rep. 803. Without this averment, complaint does not state facts sufficient to constitute cause of action, and this defect is never waived. *Id.* (1892.)

Individuals cannot, in collateral suits, avail themselves of any defects in the organization of a corporation. This may be done only by the power creating them in a direct proceeding instituted for that purpose. *Canal Co. v. Pinkham*, 1 Idaho, 790.

A corporation "to mine, smelt, refine and operate any mining property" has not the power to purchase a chose in action. *M. & S. Co. v. Duun*, 2 Idaho, 30 (1882); s. c., 3 Pac. Rep. 911.

The president and secretary of a mining corporation cannot appoint an attorney in fact to sell property without authority from directors. *Johnson v. Sage*, 44 Pac. Rep. 641.]

§ 2634. No corporation shall emit paper money or create or issue bills, notes or other evidences of debt, upon loans or otherwise, for circulation as money.

§ 2635. The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

§ 2636. If a corporation does not organize and commence the transaction of its business within one year from the date of its incorporation its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this title, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the people of the territory, on the information of the district attorney of the county of the principal place of business of the corporation.

§ 2637. Every corporation may increase or diminish its capital stock as in this section provided:

First. By a majority vote of the directors there may be called a meeting of the stockholders, to be convened for the purpose of increasing or diminishing the capital stock;

Second. Personal notice of the time and place of such meeting, and the object thereof must be served on each stockholder resident in this territory; or, in lieu thereof, the notice must be published in every issue of a newspaper published in the county where the principal place of business is located, for four weeks successively;

Third. The notice must also contain the

amount to which it is proposed to increase or diminish the capital stock;

Fourth. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation or the estimated cost of the works which it may be the object or purpose of the corporation to construct;

Fifth. At least two-thirds of the entire capital stock must vote in favor of such increase or diminution before the same is effected;

Sixth. A certificate signed and verified by the chairman and secretary of the meeting, must be made, showing a strict compliance with all the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, the vote by which the object was accomplished;

Seventh. This certificate must be subscribed by a majority of the directors, and duplicates made, one to be filed in the office of the county recorder and one in the office of the secretary of the territory, as provided for original articles of incorporation, and thereupon the capital stock is so increased or diminished;

Eighth. The written assent of the holders of three-fourths of the subscribed capital stock is as effectual to authorize the increase or diminution of the capital stock, as if a meeting were called and held; and upon written assent, the directors may proceed to make the certificate herein provided for.

§ 2638. No corporation must acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except such right of way or other property as it may acquire under the laws of congress, or as may be otherwise specially provided. A corporation may acquire real property, as provided in the Code of Civil Procedure, when needed for any of the uses and purposes there mentioned.

Certain corporations prohibited from holding land in Idaho. See Act of 1891, at p. 23.

§ 2639. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent and, if requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, mem-

ber, or stockholder, to any action or proposed action, must be entered in full — all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

§ 2640. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "stock and transfer book," in which must be kept a record of all stock; the names of the stockholders or members alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor.

§ 2641. The legislature may at any time amend or repeal this title or any chapter, articles or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

See Const., art. XI, § 3.

§ 2642. For the satisfaction of any judgment against a corporation authorized to receive tolls, its franchise and all the rights and privileges thereof, may be levied upon and sold under execution in the same manner and with like effect as any other property.

§ 2643. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof and must thereafter conduct the business of such corporation, with all its powers, and privileges, and subject to all its liabilities, until the redemption of the same as hereinafter provided.

§ 2644. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had, is a bar to any subsequent action by or on behalf of the corporation for the same.

§ 2645. The corporation whose franchise is sold, as in this title provided, in all other respects retains the same powers, is bound

to discharge the same duties, and is liable to the same penalties and forfeitures as before such sale.

§ 2646. The corporation may, at any time within one year after such sale, redeem the franchise by paying or tendering to the purchaser thereof the sum paid therefor, with ten per cent. interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender, the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

§ 2647. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business.

§ 2648. Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders, or members of the corporation dissolved, and have full power to settle the affairs of the corporation.

§ 2649. Every corporation formed for a period less than fifty years may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock, or by two-thirds of the members; or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, must be signed by the chairman and secretary of the meeting of a majority of the directors and be filed in the office of the county recorder, where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of the territory, and thereupon the term of the corporation for the specified period.

§ 2650. Any existing corporation formed under any law of this territory may continue under this chapter, or under the provisions of any subsequent chapter particularly applicable thereto, by the unanimous vote of all its directors, or its election so to continue may be made at any annual meeting of the stockholders, or members or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote or upon the written consent of the stockholders or members, or a certificate of

the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting signed by the chairman and secretary of the meeting and a majority of the directors, must be filed in the office of the recorder of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the secretary of the territory, and thereafter the corporation must continue its existence under the provisions of the title, which are applicable thereto; and must possess all the rights and powers, and be subject to all the obligations, restrictions and limitations prescribed thereby.

§ 2651. No corporation formed or existing before twelve o'clock, noon, of the day upon which this title takes effect, is affected by the provisions of this title unless such corporation elects to continue its existence under it as provided in the last section, but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed subject to the provisions of this section.

§ 2652. The provisions of this chapter are applicable to every corporation, unless such corporation is exempted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this chapter, in which case the special provision prevails.

§ 2653. Every corporation not created under the laws of this territory, doing business in this territory, must within three months after the passage of this title, or from the time of commencement to do business in this territory, designate some person residing in the county in which the principal place of business of such corporation, in this territory, is conducted, upon whom process issued by authority of, or under any law of this territory, may be served, and within the time aforesaid must file such designation in the office of the secretary of the territory, and in the office of the clerk of the district court for such county, and a copy of such designation certified by either of said officers must be evidence of such appointment; and it is lawful to serve on such person, so designated, any process issued as aforesaid, and such service must be deemed a valid service thereof.

Every such corporation which fails to comply with the provisions of this section shall be denied the benefit of the statutes of this territory limiting the time of the commencement of civil actions, and any limitations in such statutes shall only run in favor of any such corporation during such time as shall be within the territory such person duly designated as aforesaid, upon whom such service can be made.

Provided, further, That such foreign corporations complying with the provisions of this section shall have all the rights and privi-

Process; pleading; receivers — R. S., §§ 4144, 4145, 4199, 4329, 4330.

leges of like domestic corporations, including the right to exercise the right of eminent domain, and shall be subject to the laws of this territory applicable to like domestic corporations.

("Act of February 10, 1887, in effect June 1, 1887.")

See Const., art. XI, § 10. Liability of stockholder in foreign corporation. See § 2609. Corporation whose stockholders are aliens prohibited from holding land. Act of 1891, at p. 23.

[If a foreign corporation has no resident attorney, notice of appeal may be served on the resident agent having power to accept service. *Loan & Trust Co. v. McGregor*, 51 Pac. Rep. 102.]

### Part Third. Remedial.

## CODE OF CIVIL PROCEDURE.

### Part II. Civil Actions.

#### TITLE V. OF THE MANNER OF COMMENCING CIVIL ACTIONS.

Sec. 4144. Summons, how served on corporations.

4145. Publication when defendant is a foreign corporation having no agent, etc.

§ 4144. (As amended March 3, 1897.) The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this State to the president or other head of the corporation, secretary, cashier or managing agent thereof.

2. If the suit is against a foreign corporation, or a non-resident joint-stock company or association doing business and having a managing or business agent, cashier or secretary within this State to such agent, cashier or secretary, or to any station, ticket or other agent of such corporation transacting business thereof in the county where the action is commenced, and if there is no such agent in said county, then service may be had upon any such agent in any other county.

3. And whenever any foreign corporation or non-resident joint-stock company or association, doing business within the State of Idaho, shall not have any designated person actually residing in the county in which said corporation or joint-stock company shall be doing business within this State upon whom process issued by authority of or under any law of this State may be served as provided in section 2653 of the Revised Statutes of Idaho, or when any such corporation or joint-stock company having appointed such person or agent as provided in said section 2653, and said agent or person so designated, shall have removed from, or ceased to be a resident, or be absent for more than thirty (30) days from said county, then the auditor of said county shall be and is hereby designated as the authorized agent of said corporation or joint-stock company

upon whom process issued by authority of or under any law of this State, may be served with like effect as though said service were made upon the agent or person appointed or designated as provided in section 2653 of the Revised Statutes of Idaho.

\* \* \* \* \*

§ 4145. When the person on whom the service is to be made \* \* \* is a foreign corporation having no managing or business agent, cashier, or secretary within the territory, and the fact appears by affidavit to the satisfaction of the court or a judge thereof, or a probate judge, and it also appears by such affidavit, or by the verified complaint on file that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may make an order that the service be made by the publication of the summons.

#### TITLE VI. OF THE PLEADINGS IN CIVIL ACTIONS.

### CHAPTER VI.

#### Verification of Pleadings.

Sec. 4199. Verification by corporation.

§ 4199. \* \* \* When a corporation is a party, the verification may be made by any officer thereof.

#### TITLE VII. OF PROVISIONAL REMEDIES.

### CHAPTER V.

#### Receivers.

Sec. 4329. Appointment of receivers.

4330. Appointment of receivers upon dissolution of corporations.

§ 4329. A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

5. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights:

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

[A court is authorized by this section to appoint a receiver, when necessary, to take charge of property of an insolvent corporation. *Sav. & Tr. Co. v. Piper*, 40 Pac. Rep. 144.]

§ 4330. Upon the dissolution of any corporation, the district court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any member or stockholder thereof, may appoint one or more persons to be receivers or trustees of the corporation,

to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

#### **TITLE XIV. OF MISCELLANEOUS PROVISIONS.**

##### **CHAPTER VI.**

###### **Costs.**

Sec. 4915. Security for costs required of foreign corporations.

§ 4915. When the plaintiff in an action resides out of the territory, or is a foreign corporation, security for the costs and charges, which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or additional undertaking may be ordered by the court or judge upon proof that the original undertaking is sufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

###### **Part III. Special Proceedings.**

#### **TITLE VI. VOLUNTARY DISSOLUTION OF CORPORATIONS.**

Sec. 5185. How dissolved.

5186. Application, what to contain.

5187. Application, how signed and verified.

5188. Filing application and publication of notice.

5189. Objections may be filed.

5190. Hearing of application.

5191. Judgment-rolls and appeals

§ 5185. A corporation may be dissolved by the district court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

[Under §§ 5185-5187, the trustees and stockholders may sue to dissolve an insolvent corporation. *Sav. & Tr. Co. v. Piper*, 40 Pac. Rep. 144. And a court is authorized to appoint a receiver, when necessary, to take charge of corporate property. *Id.*]

§ 5186. The application must be in writing and set forth:

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved

upon by a two-third vote of all the stockholders or members;

2. That all claims and demands against the corporation have been satisfied and discharged.

§ 5187. The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

§ 5188. If the judge is satisfied that the application is in conformity with this title, he must order it to be filed with the clerk, and that the clerk give not less than thirty days' notice of the application, by publication in some newspaper published in the county, and if there are none such, then by advertisements posted up in three of the principal public places in the county.

§ 5189. At any time before the expiration of the time of publication, any person may file his objections to the application.

§ 5190. After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements herein made are shown to be true, he must declare the corporation dissolved.

§ 5191. The application, notices, and proofs of publication, objections (if any), and declaration of dissolution, constitute the judgment-roll, and from the judgment an appeal may be taken as from judgments of the county courts.

###### **Part Fourth. Penal.**

#### **PRELIMINARY PROVISIONS.**

Sec. 6301. Certain terms defined.

§. 6301. The following words, have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

Seventh. Where the word "person" is used in this Code to designate the party whose property may be the subject of any offense, it includes \* \* \* all public and private corporations or joint associations, as well as individuals.

See § 16.

###### **Part I. Of Crimes and Punishments.**

#### **TITLE XII. OF CRIMES AGAINST PROPERTY.**

##### **CHAPTER IV.**

###### **Forgery and Counterfeiting.**

Sec. 7030. Forgery of corporate seal.

7031. Penalty.

§ 7030. Every person who, with intent to defraud another, forges, or counterfeits the



seal of \* \* \* any corporation, \* \* \* is guilty of forgery.

§ 7031. Forgery is punishable by imprisonment in the territorial prison for not less than one nor more than fourteen years.

## CHAPTER X.

### Frauds in the Management of Corporations.

Sec. 7114. Frauds in subscriptions for stock of corporations.

7115. Frauds in procuring organization.

7116. Unauthorized use of name in prospectus, etc.

7117. Misconduct of directors of stock corporation.

7120. Frauds in keeping accounts in books of corporation.

7121. Officer of corporation publishing false reports.

7122. Officer of a corporation to permit an inspection.

7123. Director of a corporation presumed to have knowledge of affairs.

7124. Directors present at meeting, when presumed to have assented to proceedings.

7125. Director absent from meeting, when presumed to have assented to proceedings.

7126. Foreign corporations.

7127. "Director" defined.

§ 7114. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

§ 7115. Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board, with intent to deceive such officer or board in respect thereto, is guilty of a misdemeanor.

§ 7116. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement, or announcement of any corporation or joint-stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

§ 7117. Every director of any stock cor-

poration who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either:

1. To make any dividend, except from the surplus profits arising from the business of the corporation; and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidence of debt issued by such other corporation, is guilty of a misdemeanor.

Personal liability for declaring illegal dividend.  
§ 2509.

§ 7120. Every director, officer, or agent of any corporation or joint-stock association who knowingly receives or possesses himself of any property of such corporation or association otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making, any false entries, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the territorial prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, or a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 7121. Every director, officer or agent of any corporation or joint-stock association, who knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, is guilty of a misdemeanor.

§ 7122. Every officer or agent of any corporation, having or keeping an office within

this territory, who has in his custody or control any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

§ 7123. Every director of a corporation or joint-stock association, is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter.

§ 7124. Every director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires his dissent therefrom to be entered in the minutes of the directors.

§ 7125. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

§ 7126. It is no defense to a prosecution for a violation of the provision of this chapter that the corporation was one created by the laws of another territory, State, government, or country, if it was one carrying on business or keeping an office therefor within this territory.

§ 7127. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

## TITLE X. MISCELLANEOUS PROCEEDINGS.

### CHAPTER IX.

#### Proceedings against Corporations.

Sec. §222. Summons upon information, etc., against: by whom issued and when returnable.

§223. Form of summons.

§224. When and how served.

§225. Examination of charge.

§226. Certificate of magistrate, and return thereof with depositions.

Sec. §227. If magistrate certify that there is sufficient cause, grand jury to investigate.  
§228. Appearance and plea.  
§229. Fine on conviction, how collected

§ §222. Upon an information or presentment against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

§ §223. The summons must be substantially in the following form:

County of (as the case may be):

The Territory of Idaho to the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on specifying the day and hour), to answer a charge made against you upon the information of A. B. (or the presentment of the grand jury of the county, as the case may be), for (designating the offense generally).

Dated at the city or precinct of ....., this ..... day of ....., eighteen hundred and .....

G. H., Justice of the Peace.

(Or as the case may be.)

§ §224. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier or managing agent thereof.

§ §225. At the appointed time in the summons the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

§ §226. After hearing the proofs, the magistrate must certify upon the deposition, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate to the clerk of the district court of the county.

§ §227. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon as in case of a natural person held to answer.

§ §228. If an indictment is found, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

§ §229. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

## LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1887.

1. Prohibiting certain agreements between employers and employees.
2. Restricting right of corporations to hold lands
3. Prohibiting employment of aliens.
4. Creating State boards of arbitration.

### Act 1.

AN ACT making it unlawful for employers to enter into agreements with their employes, or persons about to enter their employment, not to become or continue as members of labor organizations; and prescribing a penalty therefor.

Be it enacted by the legislature of the State of Idaho:

Section 1. It shall be unlawful for any person, firm, or corporation to make or enter into any agreement, either oral, or in writing, by the terms of which any employe of such person, firm or corporation, or any person about to enter the employ of such person, firm or corporation, as condition for continuing or obtaining such employment, shall promise or agree not to become or continue a member of a labor organization.

§ 2. Any person or persons or corporation violating the provisions of section 1 of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than fifty or more than three hundred dollars or be imprisoned in the county jail for not more than six months, or by both such fine and imprisonment.

§ 3. This act shall take effect and be in force from and after its passage and approval.

(Approved March 6, 1893.)

### Act 2.

AN ACT restricting aliens, corporations and associations in their right to acquire and hold real estate.

Be it enacted by the legislature of the State of Idaho:

Section 1. No person other than a citizen of the United States, or who has declared his intention to become such, nor any association or corporation, except railway corporations, whose members are not exclusively citizens of the United States, or persons who have declared their intention to become such, shall hereafter acquire any land, or title thereto, or interest therein, other than mineral lands, or such as may be necessary for the actual working of mines and the reduction of the products thereof: Provided,

That no person not eligible to become a citizen of the United States shall acquire title to any land or real property within this State, except as hereinafter provided: Provided, further, This act shall not prevent the holders (whether aliens or non-residents, corporations or associations) of liens upon real estate, or any interest therein, heretofore or hereafter acquired from holding or taking a valid title to the real estate in the enforcement of such lien; nor shall it prevent any such alien, association or corporation from enforcing any lien or judgment for any debt or liability now existing, or which may be hereafter created, nor from becoming a purchaser at any sale made for the purpose of collecting or enforcing the collection of such debt or judgment; nor from preventing widows or heirs who are aliens, or who have not declared their intention to become citizens, from holding lands by inheritance; but all lands acquired as aforesaid shall be sold within five years after the title thereto shall be perfected in such alien, association or corporation, and in default of such sale, within such time, such real estate shall revert and escheat to the State of Idaho. The provisions of this act shall not be construed in any way to prevent or interfere with the ownership of mining land, or land necessary for the working of mines or the reduction of the products thereof.

§ 2. An emergency exists, therefore this act shall take effect and be in force immediately after its passage.

(Approved February 26, 1891.)

### Act 3.

AN ACT to discourage the further increase of alien population in this State.

Be it enacted by the legislature of the State of Idaho:

Section 1. It shall hereafter be unlawful for any county government or municipal or private corporation organized under the laws of this State, or organized under the laws of another State or territory or in a foreign country and doing business in this State to give employment in any way to any alien who has failed, neglected, or refused, prior to the time such employment is given, to become naturalized or declare his intention to become a citizen of the United States.

§ 2. Whenever employment has been innocently given to any alien by any county government, municipal or private corporation mentioned in section 1 of this act, and

## Employment of aliens -- Acts of 1897.

complaint shall be made in writing by any person to the officers of the county government, or municipal corporation, or general manager, superintendent, foreman, or other agent of the private corporation, having charge or superintendency of the labor of such alien employe, that such employe is an alien he shall forthwith discharge such employe from employment unless said employe shall produce his declaration to become a citizen or a certificate of naturalization, or a duly certified copy thereof.

§ 3. Any public officer or any county government, or municipal corporation, or any general manager, superintendent, foreman, or other agent of any private corporation, or any contractor or agent of any company engaged in public work, who shall violate any of the provisions mentioned in this act, who shall knowingly give employment to any alien or who having innocently given such employment shall on complaint being made to him by any person fail or refuse to discharge any such employe forthwith on the failure or refusal of such employe to produce for his inspection and the inspection of the complainant his declaration of intentions to become a citizen, or certificate of naturalization as provided in section 2 of this act, shall be deemed guilty of a misdemeanor.

§ 4. Whereas an emergency exists this act shall take effect and be in force from and after its passage.

(Approved February 18, 1897.)

## Act 4.

AN ACT to provide for a State board of arbitration for the settlement of differences between employes and their employers and to provide for local boards of arbitration subordinate thereto.

Be it enacted by the legislature of the State of Idaho:

Section 1. The governor, with the advice and consent of the senate, shall, on or before the fourth day of March, eighteen hundred and ninety-seven, appoint three competent persons to serve as a State board of arbitration and conciliation in the manner hereinafter provided. One of them shall be an employer or selected from some association representing employers of labor; one of them shall be selected from some labor organization and not an employer of labor; the third shall be appointed upon the recommendation of the other two; Provided, however, That if the two appointed do not agree on the third man at the expiration of thirty days, he shall then be appointed by the governor. On or before the fourth day of March, eighteen hundred and ninety-seven, the governor, with the advice and consent of

the senate, shall appoint three members of said board in the manner above provided; one to serve for six years; one for four years; and one for two years; or until their respective successors are appointed; and on or before the fourth day of March of each year during which the legislature of this State is in its regular biennial session thereafter, the governor shall in the same manner appoint one member of said board to succeed the member whose term then expires and to serve for the term of six years or until his successor is appointed. If a vacancy occurs at any time, the governor shall in the same manner appoint some one to serve out the unexpired term; and he may in like manner remove any member of said board. Each member of said board shall, before entering upon the duties of his office, be sworn to a faithful discharge thereof. They shall at once organize by the choice of one of their members as chairman. Said board shall choose one of its members as secretary and may also appoint and remove a clerk of the board, who shall receive pay only for time during which his services are actually required and that at a rate of not more than four dollars per day during such time as he may be employed.

§ 2. The board shall, as soon as possible after its organization, establish such rules of procedure as shall be approved by the governor and senate.

§ 3. Whenever any controversy or difference, not involving questions which may be the subject of a suit at law or bill in equity, exists between an employer, whether an individual, copartnership or corporation, and his employes if at the time he employs not less than twenty-five persons in the same general line of business in any city or town or village or county in this State, the board shall upon the application as hereinafter provided, and as soon as practicable thereafter, visit the locality of the dispute and make careful inquiry into the cause thereof, hear all persons interested therein who may come before them, advise the respective parties what, if anything, ought to be done or submitted to by either or both to adjust said dispute, and make a written decision thereof. This decision shall at once be made public, shall be recorded upon proper books of record to be kept by the secretary of said board, and a short statement thereof published in the annual report hereinafter provided for, and the said board shall cause a copy thereof to be filed with the county recorder of the county where such business is carried on.

§ 4. Said application shall be signed by said employer or by a majority of his employes in the department of the business in which the controversy or difference exists, or their duly authorized agent or by both

## Arbitration — Acts of 1897.

parties and shall contain a concise statement of the grievance complained of, and a promise to continue in the business or at work without any lockout or strike until the decision of said board if it shall be made in three weeks of the date of filing said application, when an application is signed by an agent claiming to represent a majority of such employes, the board shall satisfy itself that such agent is duly authorized in writing to represent such employes, but the names of the employes giving such authority shall be kept secret by said board. As soon as may be after the receipt of said application, the secretary of said board shall cause public notice to be given of the time and place for the hearing thereof; but public notice need not be given when both parties to the controversy join in the application and present therewith a written request that no public notice be given. When such request be made, notice shall be given to the parties interested in such manner as the board may order and the board may, at any stage of the proceedings, cause public notice to be given, notwithstanding such request. Should the petitioner or petitioners fail to perform the promise made in said application, the board shall proceed no further thereupon without the written consent of the adverse party. The board shall have the power to summon as witness any operator in the departments of business affected, and any person, who keeps the records of wages earned in those departments and to examine them under oath and to require the production of books containing the record of wages paid. Summons may be signed and oaths administered by any member of the board.

§ 5. Upon the receipt of such application and after such notice, the board shall proceed as before provided and render a written decision which shall be open to public inspection, shall be recorded upon the records of the board and published at the discretion of the same, in an annual report to be made to the governor of the State on or before the first day of February of each year.

§ 6. Said decision shall be binding upon the parties who join in said application for six months, or until either party has given the other notice in writing of his intention not to be bound by the same at the expiration of sixty days therefrom. Said notice may be given to said employes by posting the same in three conspicuous places in the shop or factory, mill or at the mine where they work or are employed.

§ 7. The parties to any controversy or difference as described in section 3 of this act may submit the matters in dispute, in writing to a local board of arbitration and conciliation, such board may be either mutually agreed upon, or the employer may

designate one of the arbitrators, the employes or their duly authorized agent, another, and the two arbitrators so designated may choose a third who shall be chairman of the board. Such board shall in respect to the matters referred to it, have and exercise all the powers which the State board might have and exercise, and, its decision shall have whatever binding effect may be agreed by the parties to the controversy in the written submission. The jurisdiction of such board shall be exclusive in respect to the matters submitted to it, but it may ask and receive the advice and assistance of the State board. The decision of such board shall be rendered within ten days of the close of any hearing held by it; such decision shall at once be filed with the recorder of the county in which the controversy or difference arose, and a copy thereof shall be forwarded to the State board. Each of such arbitrators shall be entitled to receive from the treasury of the county in which the controversy or difference exists, if such payment is approved in writing by the board of commissioners of such county, the sum of three dollars for each day of actual service, not exceeding ten days for any one arbitration, whenever it is made to appear to the mayor of a city or the board of commissioners of a county that a strike or lockout, such as described in section 8 of this act is seriously threatened or actually occurs, the mayor of such city or the board of commissioners of such county shall at once notify the State board of the facts.

§ 8. Whenever it shall come to the knowledge of the State board, either by notice from the mayor of a city or the board of commissioners of a county, as provided in the preceding section or otherwise, that a strike or lockout is seriously threatened or has actually occurred in any county or town of the State involving an employer and his present or past employes, if at the time he is employing, or up to the occurrence of the strike or lockout was employing not less than twenty-five persons in the same general line of business in any county or town in the State, it shall be the duty of the State board to put itself in communication as soon as may be with such employer and employes, and endeavor by mediation to effect an amicable settlement between them, or to endeavor to persuade them; Provided, That a strike or lockout has not actually occurred or is not then continuing, to submit the matters in dispute to a local board of arbitration and conciliation, as above provided, or to the State board; and said State board may, if it deems it advisable, investigate the cause or causes of such controversy, and ascertain which party thereto is mainly responsible or blameworthy for the exist-

## Arbitration — Acts of 1897.

ence or continuance of the same, and may make and publish a report finding such cause or causes and assigning such responsibility or blame. The board shall have the same powers for the foregoing purposes as are given it by section 3 of this act.

§ 9. Witnesses summoned by the State board shall be allowed the sum of fifty cents for each attendance, and the sum of twenty-five cents, for each hour of attendance in excess of two hours and shall be allowed five cents a mile for travel each way from their respective places of employment or business to the place where the board is in session. Each witness shall certify in writing the amount of his travel and attendance, and the amount due him shall be paid forthwith

by the board, and for such purpose the board shall be entitled to draw from the treasury of the State for the payment thereof any of the unappropriated moneys of the State.

§ 10. The members of said board shall be paid six dollars per day for each day that they are actually engaged in the performance of their duties, to be paid out of the treasury of the State, and they shall be allowed their necessary traveling and other expenses, which shall be paid out of the treasury of the State.

This bill having remained with the governor to exceed ten (10) days (Sundays excepted) after the legislature adjourned, becomes a law this twentieth (20th) day of March, A. D., 1897.

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ILLINOIS.

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## LEGISLATIVE ACTS OF 1897.



# ILLINOIS.

## CONSTITUTION OF ILLINOIS—1870.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE II.

##### Bill of Rights.

- Sec. 13. Private property not to be taken with out compensation.  
14. Laws impairing obligation of contracts, or making irrevocable grants prohibited.

#### ARTICLE IV.

##### Legislative Department.

- Sec. 20. Public credit not to be loaned to cor porations.  
22. Special legislation prohibited.  
23. Indebtedness of corporations not to be released.

#### ARTICLE IX.

##### Revenue.

- Sec. 1. Taxation shall be uniform.

#### ARTICLE XI.

##### Corporations.

- Sec. 1. Organization of corporations.  
2. Existing charters.  
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4. Construction of street railroads.  
14. Power of general assembly over existing companies.  
15. Freight and passenger tariffs regulated.

##### Separate Sections.

1. Municipalities not to become subscribers to capital stock.  
2. State credit not to be given in aid of railroads and canals.

#### ARTICLE II.

##### Bill of Rights.

§ 13. Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the State, shall be ascertained by a jury, as shall be prescribed by law. The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it is taken.

See Const., art. XI, § 14.

[No distinction between corporation and individuals in right to take property. *Ry. Co. v. Lake*, 71 Ill. 333; *Peterson v. I. L. & L. Co.*, 6 Brad. 257; *R. R. Co. v. Bloomington*, 76 Ill. 447.

Words "or damaged" not in Constitution of 1848. *Rigney v. City*, 102 Ill. 64.

This section refers solely to exercise of power of eminent domain and not to taxing power. *White v. People*, 94 Ill. 604. And it merely limits power of eminent domain, which is attribute of State. *Lake Shore, etc., Ry. Co. v. Chicago, etc.*, *R. R. Co.*, 97 Ill. 506.

Right to recover compensation for private prop-

erty taken or damaged for public use, is given by Constitution independent of statute. *Elgin v. Eaton*, 83 Ill. 535.

Under this section, apart from statute, damage to property not taken cannot be recovered where its value after construction of work is not less than before. *R. R. Co. v. Francis*, 70 Ill. 238; *Eberhart v. R. R. Co.*, id. 347.

This section does not affect owner's duty to fence, under statute. *R. R. Co. v. Pence*, 68 Ill. 524.

Under Constitution, owner whose land is taken for public use must be paid its value in money, without any deductions for benefits to his remaining property, any statute to the contrary notwithstanding. *Carpenter v. Jennings*, 77 Ill. 250.

Expediency or necessity of exercise of right of eminent domain is a political question, not a judicial one, and when power has been delegated to a corporation equity will not interfere with its exercise on ground of lack of necessity. *Chicago v. Wright*, 69 Ill. 318. Courts cannot inquire into the necessity or propriety of exercise of the right. *R. R. Co. v. Lake*, 71 Ill. 333; *L. S., etc., Ry. Co. v. Chl.*, etc., *R. R. Co.*, 97 id. 509; *Smith v. Same*, 105 id. 511. But may inquire as to whether the use is to be public or private. *Dunham v. Hyde Park*, 75 Ill. 371.

Railroad not limited to first condemnation. *Fisher v. R. R. Co.*, 104 Ill. 323.

Corporation de facto may exercise power of eminent domain. *McAuley v. R. R. Co.*, 83 Ill. 348.

Easement acquired by this right is protected as property to same extent as any other property. *R. R. Co. v. Village*, 14 Ill. App. 615.

Property and franchise of corporation may be condemned like property of an individual. *R. R. Co. v. Lake*, 71 Ill. 333; *Met. R. Co. v. Chl.*, etc., *R. Co.*, 87 id. 317; *St. L., etc., Co. v. Springfield, etc.*, *R. Co.*, 96 id. 274. But not so as to destroy value of franchise. *Cent. R. Co. v. F. C. R. Co.*, 81 Ill. 525.

Injury to property must be physical; injury to market value cannot be shown. *R. R. Co. v. Hall*, 8 Ill. App. 621; *Moses v. R. R. Co.*, 21 Ill. 516; *Chicago v. Rumsey*, 8 id. 348; *Transp. Co. v. Chicago*, 99 U. S. 635.

Power of eminent domain is inherent in the sovereign. *Johnson v. R. R. Co.*, 23 Ill. 202; and is derived wholly from the state. *U. C. R. Co. v. Chl.*, etc., *R. Co.*, 87 id. 317.

Art. 2, § 13, cited. *Mitchell v. R. R. Co.*, 68 Ill. 286; *L. S., etc., R. Co. v. Chl.*, etc., *R. Co.*, 100 id. 21; *Bross v. R. R. Co.*, 9 Ill. App. 363.

Mode prescribed by law for exercise of right of eminent domain must be strictly pursued. *Iron Works v. Ry. Co.*, 141 Ill. 491; *s. c.*, 30 N. E. Rep. 1050.

Whether power of eminent domain may be exercised is a question for the legislature. *R. R. Co. v. Chicago*, 141 Ill. 586; *s. c.*, 30 N. E. Rep. 1044.]

§ 14. No ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed.

Special legislation prohibited. Art. IV, § 22. See ch. 32, § 9.

[Charter of private corporation is a contract. Repeal or alteration thereof without consent of corporation is prohibited. *Bruffett v. R. R. Co.*, 25 Ill. 353; *Ruggles v. People*, 91 id. 256.]

Exemption of corporation from taxation by charter is binding on State. *People v. Soldiers' Home*, 95 Ill. 561; *R. R. Co. v. Goodwin*, 94 id. 262.

But corporation is still subject to statutes passed in exercise of police power. *Ruggles v. People*, supra; *R. R. Co. v. Haggerty*, 67 Ill. 113. Such laws must, however, relate to the health and safety of the community, and must not be oppressive. *R. R. Co. v. Jacksonville*, 67 Ill. 37.

As to whether necessity for such laws is a political or a judicial question. *Id.* Instances of its exercise. *R. R. Co. v. McClelland*, 25 Ill. 140; *Ry. Co. v. Deacon*, 63 id. 91; *R. R. Co. v. Haggerty*, 67 id. 113; *C. A. & R. Co. v. People*, id. 11; *R. R. Co. v. People*, 95 id. 313.]

#### ARTICLE IV.

##### Legislative Department.

§ 20. The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to or in aid of any public or other corporation, association or individual.

See Const., separate sections. § 2.

[Under Constitution of 1848, an act authorizing a county to subscribe to stock of a railroad company was held not to lend credit of the State. *County v. People*, 58 Ill. 456.]

§ 22. The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for \* \* \*

Granting to any corporation, association or individual the right to lay down railroad tracks, or amending existing charters for such purpose;

Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever.

See art. II, § 14. Construction of railroads. Art. XI, § 4.

[By this section, the Constitution has reversed the old policy of granting exclusive privileges to corporations of any kind. *People v. Chi. G. T. Co.*, 130 Ill. 297; s. c., 22 N. E. Rep. 798.]

Statute for dissolution of insurance companies, for insolvency, which applies to all insurance companies, is not special law within prohibition of this section. *Ins. Co. v. Auditor*, 101 Ill. 82.

Legislature has no power to exempt certain corporations from the effect of a general penal law. *Swigart v. People*, 50 Ill. App. 182.

No law making irrevocable grants of special privileges or immunities can under our Constitution be passed. *Ry. Co. v. Chicago*, 62 Ill. App. 502.]

§ 23. The general assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this State or to any municipal corporation therein.

Laws impairing obligation of contracts prohibited. Const., art. II, § 14.

[Debts incurred by a corporation cannot be released or transferred by act of legislature. *Bruffett v. R. R. Co.*, 25 Ill. 353.]

#### ARTICLE IX.

##### Revenue.

Section 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax \* \* \* toll bridges, ferries, insurance, telegraph and express interests or business, \* \* \* and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.

See ch. 120, § 1, and cross-reference.

[As to principles governing the taxation of the tangible property and capital stock of corporations, see *Hotel Co. v. Lieb*, 83 Ill. 602.]

This provision is violated by assessing property of railway company higher than other property in county although at less than its real value. *County v. R. R. Co.*, 44 Ill. 229; *R. R. Co. v. County*, id. 240.

Power of State board of equalization to make rules for assessment of capital stock of corporations is not unconstitutional. *Porter v. R. R. Co.*, 76 Ill. 561; *Gas Co. v. Higby*, 134 id. 562; s. c., 25 N. E. Rep. 660.

Railway property acquired by perpetual lease is taxable as property of company. *Huck v. R. R. Co.*, 86 Ill. 352.

Assessment of railway property at two-thirds of actual value, and other property at one-third, invalid. *R. R. Co. v. Livingstone Co.*, 68 Ill. 458. Same also as to bank stock. *Darling v. Gunn*, 50 Ill. 424.

As to corporations, above section only requires that law under which they are taxed shall be general, and uniform as to class upon which it operates. *Porter v. R. R. Co.*, supra.

Tax on foreign insurance companies, not imposed on domestic ones, does not contravene above requirement. *Hughes v. Cairo*, 92 Ill. 339. Nor does a provision imposing same burdens on foreign insurance company doing business in Illinois that are imposed on Illinois companies doing business in foreign State. *Ins. Co. v. Swigert*, 104 Ill. 653.

Legislature in imposing taxes may discriminate against foreign in favor of domestic corporation. *Ducat v. Chicago*, 48 Ill. 172. And may prescribe different rule for taxation of railway companies from that of taxation of individuals, but rule must be uniform as to all railway companies. *State R. R. Tax Cases*, 92 U. S. 575.

Capital stock may be taxed against the corporation instead of against shareholders. *Glass Co. v. McCaleb*, 81 Ill. 556.

Constitution requires franchise of corporation to be taxed. *Id.*; *Porter v. R. R. Co.*, supra; *R. R. Co. v. Chicago*, 90 Ill. 573.

Assessment and taxation of capital stock of corporation, and also of its tangible property, is not double taxation, and its collection will not be enjoined. *B. & T. Co. v. Parks*, 88 Ill. 170; *Hotel v. Lieb*, 83 id. 602; *Mfg. Co. v. Parks*, 88 id. 463; *Porter v. R. R. Co.*, 76 id. 561; *Ins. Co. v. Pollak*, 75 id. 292; *Hopkins v. Taylor*, 87 id. 436.

Excess of capital stock over tangible property may be taxed where it is found, by board of equalization, to exist. *R. R. Co. v. Siders*, 88 Ill. 320.

Legislature may tax capital stock of gas companies, while it exempts stock of purely manufacturing companies. *Williams v. Rees*, 9 Biss. (U. S.) 405.

State law directing taxation of shares of national

## Corporations — Const., Art. xi, §§ 1-4, 14.

bank at place where bank is located is not unconstitutional. *Tappan v. Bank*, 86 U. S. (19 Wall.) 490.

Franchises and tangible property must be assessed against corporation not against shareholders. *Porter v. R. R. Co.*, supra.

Imposing on railway companies expense of burying persons who die on cars is unconstitutional, as being in nature of special tax. *R. R. Co. v. Lackey*, 77 Ill. 55, *semble*.

Legislature may tax residents of this State on shares of stock which they own in corporations created by laws of other States. *W. U. Tel. Co. v. Lieb*, 76 Ill. 172.

The power to impose a tax on the capital stock of a corporation is not confined to the first clause of this section of the Constitution. The second clause enumerates some corporations, and is not confined to occupations merely. It applies to elements of property and of property rights and values. *Gas Co. v. Higby*, 134 Ill. 564; s. c., 25 N. E. Rep. 660.

The rule of uniformity applies to the class — not to all corporations alike. *Id.* 562; *Coal R. Co. v. Finlen*, 124 Ill. 608; s. c., 17 N. E. Rep. 11. *R. R. Co. v. Donahue*, 127 Ill. 29; s. c., 18 N. E. Rep. 827.

Constitution does not prohibit legislature from placing specified corporations in one class and certain others in another class, to be assessed by different methods. *Gas Co. v. Higby*, supra.]

## ARTICLE XI.

## Corporations.

Section 1. No corporation shall be created by special laws, or its charter extended, changed or amended, except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the State, but the general assembly shall provide, by general laws, for the organization of all corporations hereafter to be created.

See Const., art. IV, § 22. What corporations may be formed. Ch. 32, § 1. Legislative powers reserved. Ch. 32, § 9.

[Private corporations are subject to legislative control. *Ward v. Farwell*, 97 Ill. 593; *People v. Nelson*, 133 Ill. 579; s. c., 27 N. E. Rep. 217. And subject to the police power. *Assn. v. R. R. Co.*, 121 Ill. 203; s. c., 12 N. E. Rep. 536.

The acceptance of an amendment to the charter, under any general law, makes it subject to the power of the legislature. *Gulliver v. Roelle*, 100 Ill. 141.

The new Constitution does not repeal the statute relating to corporations. *Meeker v. Steel Co.*, 84 Ill. 276.

The legislation of a State bordering on this cannot have the least effect in creating a corporation in this State. *Bridge Co. v. County*, 88 Ill. 615.

What necessary to create a corporation under a general law. *Bigelow v. Gregory*, 73 Ill. 197.

This section has reversed the old policy of granting exclusive privileges to corporations of any kind. *People v. Chicago G. T. Co.*, 130 Ill. 297; s. c., 22 N. E. Rep. 798.

The manifest intention of this section is to require not only the creation of corporations, but amendments to charters of those existing, to be made by general laws. Special acts, applying to particular corporations only, fall under prohibition of this section. *Coal Co. v. People*, 147 Ill. 66; s. c., 35 N. E. Rep. 62. Act restricting right of corporation to contract is necessarily such an amendment. *Id.*

Legislature has same power to validate irregularly organized corporations as it has to create a new one. *Mitchell v. Deeds*, 49 Ill. 416.

Reservation in charter that it may be altered or repealed by legislature, undoubtedly gives legislature power to change it. *Butler v. Walker*, 80 Ill. 345.

A statute requiring passenger trains to stop at county seats is valid. *R. R. Co. v. People*, 105 Ill. 657.]

§ 2. All existing charters or grants of special or exclusive privileges, under which organization shall not have taken place, or which shall not have been in operation within ten days from the time this Constitution takes effect, shall thereafter have no validity or effect whatever.

Quo warranto on forfeiture. Ch. 112, § 1.

[An organization followed by public grants of rights and the acceptance thereof prior to the Constitution of 1870, and the performance of other corporate acts is not abrogated by the above section. *McCartney v. R. R. Co.*, 112 Ill. 624.

Above section cited. *Ry. Co. v. Ry. Co.*, 105 Ill. 110; *Anthony v. Bank*, 93 Ill. 225; *People v. Loewenthal*, *Id.* 191.]

§ 3. The general assembly shall provide, by law, that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

See ch. 32, § 3.

§ 4. No law shall be passed by the general assembly granting the right to construct and operate a street railroad within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

Location of street railroad. Ch. 32, § 28. Special legislation prohibited. Art. IV, § 22.

§ 14. The exercise of the power, and the right of eminent domain, shall never be so construed or abridged as to prevent the taking, by the general assembly, of the property and franchises of incorporated companies already organized, and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when, in the exercise of the said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right.

See Const., art. II, § 13, and note.

[Statutory sanction to justify an injury by a corporation to private property without compensation or the owner's consent must be express or given by clear and unmistakable implication. *Snell v. Buresh*, 123 Ill. 155; s. c., 13 N. E. Rep. 856.

A corporation has no power to sell or transfer its franchise or any property, essential to its exercise, which it acquired by condemnation. *Fletsam v. Hay*, 122 Ill. 294; s. c., 13 N. E. Rep. 501.

Legislature can authorize taking of property, already applied to one public use, in hands of one person and giving it to another, only for different public benefit. *Lake Shore, etc., v. Chicago, etc., Co.*, 97 Ill. 506; 100 Id. 21.]

§ 15. The general assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

Laws impairing obligations of contracts prohibited. Art. II, § 14.

[Above section applies only to unjust discrimination. *C. & A. R. Co. v. People*, 67 Ill. 11. Statute working a forfeiture of franchise on first conviction for violation, unconstitutional. Id.]

#### Separate Sections.

(1) No county, city, town, township or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation: Provided, however, That the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption.

See art. IV, § 20.

[Section applied. *Maxcy v. County*, 72 Ill. 207.

Article of Constitution of 1870, prohibiting municipal aid to corporations, rendered inoperative all prior laws authorizing the voting of aid to corporations. *Wade v. LaMolle*, 112 Ill. 79.

Above section took effect July 2, 1870, and such subscriptions not voted prior thereto are void. *Wright v. Bishop*, 88 Ill. 302; *Concord v. Bank*, 92 U. S. 625; *County v. Bank*, Id. 631; *County v. Post*, 93 Id. 502; *Fairfield v. County*, 100 Id. 47; *Walnut v. Wade*, 103 Id. 683; *Louisville v. Bank*, 104 Id. 469; *Walnut v. Wade*, 105 Id. 1.

Since above section went into effect, municipal bonds in aid of railroad corporations are prima facie invalid, putting burden of proof on party who affirms their validity. *Prairie v. Lloyd*, 97 Ill. 179.

Municipal subscriptions authorized by popular vote prior to adoption of Constitution, is invalid, by above section, unless such vote was taken in pursuance of a law existing at time of such vote. *R. R. Co. v. Morris*, 84 Ill. 410.

Where vote taken and subscription made prior to adoption of above section, the former Constitution governs, though bonds were not issued until afterward. *Decker v. Hughes*, 68 Ill. 33.

A State Constitution cannot impair obligation of prior contract. *County v. Bank*, 92 U. S. 631.

Bonds issued after above section took effect, in pursuance of contract made and partly performed before it took effect, are valid. *County v. Society*, 104 U. S. 579.

"Under existing laws" relates to time of adoption of Constitution and not to time when vote of the people was taken. *Jonesboro v. R. R. Co.*, 110 U. S. 192; 4 Sup. Ct. Rep. 67.]

#### Canal.

(2) \* \* \* The general assembly shall never loan the credit of the State, or make appropriations from the treasury thereof, in aid of railroads or canals: Provided, That any surplus earnings of any canal may be appropriated for its enlargement or extension.

See art. IV, § 20.



## REVISED STATUTES OF ILLINOIS — 1895.

## CHAPTER XI.

## Attachments.

Sec. 1. Grounds of attachment.

## In Courts of Record.

AN ACT in regard to attachments in courts of record. [Approved December 23, 1871; in force July 1, 1872.]

Section 1. Be it enacted by the People of the State of Illinois, represented in the general assembly, That in any court of record having competent jurisdiction, a creditor may have an attachment against the property of his debtor, or that any one or more of several debtors, when the indebtedness exceeds \$20, in any one of the following cases:

First. Where the debtor is not a resident of this State.

Execution. Ch. 77, §§ 52 et seq.

[Shares of stock of a corporation, which are liable to be taken on execution, are subject to be taken also on attachment. *Thompson v. Wells*, 57 Ill. App. 436.]

Foreign corporation liable to attachment. R. R. Co. v. Keep, 22 Ill. 9.

It is no defense that both parties are non-residents. *Givens v. Bank*, 84 Ill. 442.]

## CHAPTER XXXII.

## Corporations.

## For Pecuniary Profit.

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  5. Powers — restrictions as to real estate.
  6. Directors — officers — by-laws.
  7. Stock — installments — compelling payment.
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  19. Dividends of insolvent company — liability.
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54. Notice of change to be published.

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60. How special meetings for that purpose may be called.

61. Manner of voting — proxies.

62. If a change voted, certificate to be filed — effect.

63. Repeal.

64. Emergency.

## Consolidation.

Sec. 65. Consolidated company liable for debts of original companies.

## Corporations Acting by Attorneys.

Sec. 66. What agents appointed by letters of attorney may do.

### Loans on Real Estate by Foreign Corporation.

Sec. 67. Foreign corporations may loan money in this State on same terms, etc., as domestic — may also buy in real estate — when same is to be sold.

### Manufacturing, etc., Companies May Hold Stock of Railroad Companies.

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### Corporations — Dissolution of.

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 153. Practice — chancery.  
 154. Separate docket.  
 155. Upon the hearing — resolution.  
 156. Costs.

AN ACT concerning corporations. [Approved April 18, 1872; in force July 1, 1872]

### For Pecuniary Profit.

Section 1. Be it enacted by the People of the State of Illinois, represented in the general assembly: That corporations may be formed in the manner provided by this act for any lawful purpose except banking, insurance, real estate brokerage, the operation of railroads and the business of loaning money; Provided, That horse and dummy railroads, and organizations for the purchase and sale of real estate for burial purposes only, may be organized and conducted under the provisions of this act: And provided further, That corporations formed for the purpose of constructing railroad bridges shall not be held to be railroad corporations. (As amended April 19, 1879; in force July 1, 1879.)

Consolidation. § 65. See p. 40, tools, trusts and combines prohibited. Ch. 38, §§ 263a et seq.

Corporation not to be created by special laws. Const., art. XI, § 1. Assuming corporate powers without complying with this act. § 18, post.

[General law does not apply to corporations under special charter. *Wincock v. Turpin*, 96 Ill. 135.

A corporation for pecuniary profit is one organized for the pecuniary profit of its stockholders or members. *Fenn. Acad. v. Sullivan*, 116 Ill. 280; s. c., 6 N. E. Rep. 183.

A franchise is the right or privilege of being a corporation and of doing such things only as are authorized by charter. *Fletsam v. Hay*, 122 Ill. 291; s. c., 13 N. E. Rep. 501; *People v. O'Hair*, 128 Ill. 22; s. c., 21 N. E. Rep. 211; *Bushnell v. Ice M. Co.*, 37 Ill. App. 133. And is vested in the corporations, not in the corporation. *Id.* All corporations accept their franchise subject to regulation under the police power. *Cone, C. Assn. v. R. R. Co.*, 121 Ill. 203; s. c., 12 N. E. Rep. 536. And are the creatures of legislative power. *People v. Nelson*, 133 Ill. 579; s. c., 27 N. E. Rep. 217.

It follows that the determination as to what shall be their constitution, objects and powers is

wholly within the legislative discretion, absolutely, except in so far as the Constitution limits the exercise of that discretion. *Id.*

If the general scheme is one which is calculated to promote the object for which a corporation is created and if the subsidiary provisions of the act creating it are calculated to promote and further the general scheme, the provisions of the act cannot be foreign to the general subject embraced in the title. *Id.*

The charter of a corporation formed under general incorporation act consists of its articles of association taken in connection with the law under which the company is organized. *People v. Chicago T. Co.*, 130 Ill. 285; s. c., 22 N. E. Rep. 798.

The provisions of the law enter into and form a part of the charter. *Id.*

The word "unlawful," as applied to the purposes and acts of a corporation, is not used exclusively in the sense of *malum in se* or *malum prohibitum*. *Id.*

This word is also used to designate powers which corporations are not authorized to exercise, contracts they are not empowered to make or acts which they may not do. In other words, acts, contracts and powers *ultra vires*. *Id.*

An agreement to form a corporation is such a joint undertaking as that which would be liable for expenses. *Griffen v. Cooper*, 50 Ill. App. 258.

If contracts and grants the tendency of which is to create monopolies, are void at common law, then where a corporation is formed under a general law, a provision in its declaration of corporate purposes, the necessary effect of which is to create a monopoly, is also void. *Id.*

Words of permission in the charter of a corporation, if tending to promote the public benefit, are obligatory. In such case a provision that a corporation "may enjoy" the same privileges as those awarded under the general law, is to be construed to mean "shall enjoy" such privileges. *Snell v. Chicago*, 133 Ill. 437; s. c., 24 N. E. Rep. 532.

A corporation is itself a franchise belonging to its members. The corporation being a franchise it may hold other franchises, as rights and franchises of the corporators. *Id.*

Such franchise is, in its nature, incommunicable by act of the parties, and incapable of passing by assignment. *Id.* And cannot descend to heirs. *Id.*

A franchise is a particular privilege conferred by grant from a sovereign or government and vested in individuals or a corporation. *Chicago M. G. L. Co. v. Lake*, 130 Ill. 53; s. c., 22 N. E. Rep. 616.

The franchises of a corporation organized under the general incorporation law are to be ascertained from the objects of its incorporation, as stated in the articles. *Id.*

A purchaser of a franchise is not by his purchase constituted a corporation, but is merely vested with the right to organize a corporation. *Snell v. Chicago*, 133 Ill. 430; s. c., 24 N. E. Rep. 532.

A drainage district in a city or village is not a private corporation. *Springer v. Walters*, 139 Ill. 419; s. c., 28 N. E. Rep. 761.]

§ 2. Whenever any number of persons, not less than three nor more than seven, shall propose to form a corporation under this act, they shall make a statement to that effect under their hands, and duly acknowledged before some officer in the manner provided for the acknowledgment of deeds, setting forth the name of the proposed corporation, the object for which it is to be formed, its capital stock, the number of shares of which such stock shall consist, the location of the principal office, and the duration of the corporation, not exceeding, however, ninety-nine years; which statement shall be filed in the office of the secretary of State. The secretary of State shall there-

## License; corporate name — R. S., ch. xxxii, § 2.

upon issue to such persons a license as commissioners to open books for subscription to the capital stock of said corporation, at such times and places as they may determine; but no license shall be issued to two companies having the same name: Provided, That no corporation shall be organized under this act unless the persons named as incorporators shall, at the time of filing said statement, pay to the secretary of State the sum of twenty-five dollars (\$25.00), which fee shall be in full, and in lieu of all other fees for issuing incorporation articles. (As amended by act approved June 17, 1893.)

Assuming corporate powers without authority. § 18, post. Certified copy of charter evidence. § 27, post. Change of name, increase of capital stock, etc. § 50 et seq., post. Voluntary surrender of charter. § 49b, post. Proceedings in quo warranto. Ch. 112, § 1 et seq. Consolidation of franchise. § 65, post. Corporation continued after expiration of charter. § 10, post. Reincorporation. § 28 1-2, post. Assuming corporate name. Ch. 38, § 220.

[Certificate of president of corporation, showing a change in its name, etc., is sufficient under the statute. *Anthony v. Bank*, 93 Ill. 225.

The legality of a corporation cannot be attacked collaterally. *Rice v. R. R. Co.*, 21 Ill. 93; *Goodrich v. Reynolds et al.*, 31 id. 490; *Thompson v. Candor*, 60 id. 244; *R. R. Co. v. R. R. Co.*, 75 id. 113; *McCarthy v. Lavasche*, 89 id. 270; *Osborn v. People*, 103 id. 224; *Meeker v. Steel Co.*, 84 id. 276; *Gas Co. v. Kerber*, 5 Ill. App. 132; *Ward v. Farwell*, 97 Ill. 593; *Atty.-Gen. v. R. R. Co.*, 112 id. 537; *Keigwin v. Comrs.*, 115 id. 351; s. c., 5 N. E. Rep. 575; *Lees v. Comrs.*, 125 Ill. 49; s. c., 16 N. E. Rep. 915; *People v. Trustees*, 111 Ill. 173; *Brown v. Ry. Co.*, 125 Ill. 600; s. c., 18 N. E. Rep. 283; *Wingett v. Build. Assn.*, 128 Ill. 81; s. c., 21 N. E. Rep. 12; *Bailey v. Bk.*, 127 Ill. 310; s. c., 19 N. E. Rep. 695; *Fey v. Watch Co.*, 32 Ill. App. 631; *Bushnell v. Machine Co.*, 138 Ill. 67; s. c., 27 N. E. Rep. 596; *Curtis v. Tracy*, 62 Ill. App. 49.

And this is likewise true as to a foreign corporation. *Hudson v. G. H. Semin.*, 113 Ill. 626.

But subscriber to stock being sued for subscription may require strict proof that corporation suing is such de jure. *Id.*; but see *Fey v. Watch Co.*, supra.

When a company incorporated under the general law omits to file the certificate of incorporation, yet as to third persons it is a corporation. *Baker v. Backus*, 32 Ill. 79; *Ice Co. v. Backus*, *id.*, 116.

An error in filing a certified copy of articles of association with the proper depository, instead of a duplicate, followed by an exercise of corporate functions; there is a corporation de facto. *Hudson v. G. H. Semin.*, supra.

In several cases expressions have been used leading to an inference that quo warranto is the only mode of testing the legality of the formation of an existing de facto corporation. The cases do not so decide and the question did not arise in them. *Comrs. v. Griffin*, 131 Ill. 342; s. c., 25 N. E. Rep. 995.

Where an appeal from a justice is taken by a party as a corporation its appeal bond sufficiently proves its corporate existence. *L. Gerl. Co. v. Labadie*, 41 Ill. App. 283.

Under the Practice Act (§ 28) a defendant may plead non assumption and nul tiel corporation. When the latter plea is interposed the burden of proving corporate existence is cast on the plaintiff corporation. *Bailey v. Bk.*, 127 Ill. 310; s. c., 19 N. E. Rep. 695.

Where partners attempt to organize a corporation but fail to comply with the law, they may be held liable as partners. This liability rests on estoppel, but a creditor who has dealt with the corporation as such is also estopped to deny its corporate existence. *Bushnell v. Machine Co.*, 138 Ill. 67; s. c., 27 N. E. Rep. 596. What constitutes a corporation de facto. *Id.*

In case of a question of the duration of a private corporation, license, and not the preliminary agreement of incorporators, will control. *Id.*

The State alone can complain of the exercise of corporate franchise beyond the period for which corporation was organized. *Id.*

The law confers no power on secretary of State to revoke the license to organize a corporation, except for failure to complete organization within two years. *Watch Case Co. v. Pearson*, 140 Ill. 423; s. c., 31 N. E. Rep. 400.

Articles of association certified by secretary of State are prima facie proof that stock has already been subscribed. Whether failure to have stock fully subscribed would invalidate organization, query. *Jewell v. Paper Co.*, 101 Ill. 57.

To create a de facto corporation there must be a law under which such corporation might be lawfully created, together with a user under such law. *Trust Co. v. Minnesota Co.*, 157 Ill. 641; s. c., 42 N. E. Rep. 153.

Merely fact that corporations of different States attempt to consolidate under a law authorizing consolidation and assume to act as a consolidated corporation, even in belief that they were legally incorporated, will not constitute them a corporation de facto. *Id.*

What amounts to a consolidation of corporations. *Ry. Co. v. Ashling*, 160 Ill. 373; s. c., 43 N. E. Rep. 357. The general rule that consolidation works dissolution of original companies is subject to exceptions. *Id.*

A corporation which has completed its organization, except the filing of its final certificate of organization for record in the county where its principal office is located, is a corporation de facto, and its stockholders are estopped to deny its existence as a corporation. *Curtis v. Tracy*, 62 Ill. App. 49.]

[Corporate name. The use of a particular name by a corporation will not be enjoined unless it be shown that the proposed use will likely result in injury to complainant. *Drum, Tob. Co. v. Randle*, 114 Ill. 431; s. c., 2 N. E. Rep. 536.

There is no provision in the statute, for the incorporation of companies for pecuniary profit, authorizing the secretary of State to reject the proposed name and substitute another. *Id.*

A corporation of Illinois cannot enjoin the formation of a new corporation in this State, under a similar name, to prevent any injury to the trade of a foreign corporation in this State. *Id.*

A domestic corporation, incorporating, by its members, in a sister State, keeping up its organization here only to prevent others from transacting the same business cannot enjoin a new corporation by a similar name, when its trade-marks are not violated or to be used. *Id.*

A corporation is entitled to the same protection of its name as an individual is of his trade-mark. *Merch. Det. Assn. v. Det. Merc. Ag.*, 25 Ill. App. 250.

Equity will enjoin threatened acts by persons assuming to act for or in the name of a dead corporation. *Atty.-Gen. v. R. R. Co.*, 112 Ill. 537.

Also to restrain one incorporation from doing business in its name before the company is duly incorporated. *Curran v. Bradner*, 27 Ill. App. 582.

Appeal to the supreme court lies direct from a decree dismissing a bill to enjoin the incorporation of a company by a designated name, adopted in prefatory steps and proceedings — it involves a franchise. *Drum, Tob. Co. v. Randle*, supra.

Merely assumption of, or advertising in, a name appropriate for a corporation is not an offense, unless it be done in solicitation of business. *Edgerton v. Preston*, 15 Ill. App. 23. But in an action against a corporation its appearance by a name importing a corporation is an admission of

its corporate existence. *L. Gerl. Co. v. Labadie*, 41 Ill. App. 283; *Supreme Lodge, etc., v. Zuhlke*, 39 id. 101.

On a question of the identification of a corporation claiming under a will, claimant may prove every fact and circumstance surrounding testator and the claimant, which will aid the court in reaching a conclusion as to testator's motives and purposes in using the name or description used. *Miss. So. v. Mead*, 131 Ill. 33; s. c., 23 N. E. Rep. 603.

A corporation cannot, except as authorized by law, change its own name, either directly or by user. It may acquire a name by usage or reputation if no name is given to it at its organization by the State. It cannot, however, having a corporate name given by its charter, at the same time have a different name by usage or prescription. *Svkes v. People*, 132 Ill. 46; s. c., 23 N. E. Rep. 391.

The provision of a statute fixing the name of a corporation thereby created is an essential part of the act. It is an express legislative declaration that the corporate name shall be as there given. *Id.* 42.

To sustain grants to or by a corporation some latitude is permitted in the use of their names, it being usually sufficient to use the name in substance, though not the same in exact words and syllables — as to sustain a devise to a corporation mistakenly named. *Id.* 47.

So, when a corporation conveys by a wrong name, it cannot avail itself of its own wrong, after receiving full consideration for the conveyance. *Id.*

When a corporation is the prosecutor, or is so affected by the crime charged that its name is material to a proper statement of the offense, its name must be correctly given and proved as alleged. A variance between the allegation and proof will defeat the prosecution. *Id.* 48.

The fact that a corporation alleged to have been defrauded has, without authority of law, assumed and done business under the name alleged in the indictment does not change the rule. If, as to its name, the indictment and proof are variant the prosecution must fail. *Id.*

The effect of filing an information, in the nature of quo warranto, against a corporation by its corporate name, to procure a forfeiture of its charter or to compel it to disclose by what authority it exercises its corporate franchise, is to admit the existence of the corporation. If an information be filed against a corporation by its corporate name and it is brought in and pleads in the same corporate character its corporate existence cannot, afterward, be controverted. *People v. Spring Valley*, 129 Ill. 175; s. c., 21 N. E. Rep. 843.

The right to be a corporation by a particular name is a franchise. *Boiler Co. v. Trip. B. Co.*, 137 Ill. 232; s. c., 28 N. E. Rep. 248.

The right to be a corporation by a particular name and the right to use a franchise in transacting its business are distinct and wholly different rights. The latter can exist only where there is distinct and specific grant or, perhaps, right by prescription authorizing it. *Id.*

The right of a corporation to the use of its name cannot be greater or different in principle than that of an individual. *Id.*

So, a corporation may acquire a right to use its name as a trade-mark. It may, however, be enjoined from so doing, at the suit of one who has previously acquired the right to use it as a trade-mark. *Id.*

A bill to restrain the use of a certain name as the designation of a corporation involves a franchise, in the question of the right to use it. *Hazel B. Co. v. Hazel T. B. Co.*, 37 Ill. App. 310.

Where there is not such a resemblance between the goods manufactured by two corporations, or their circulars or advertisements, as would deceive the ordinary mass of purchasers an injunction will not issue to restrain the use by one of them of the name by which it is known. *Hazel B. Co. v. Hazel T. B. Co.*, 40 Ill. App. 436.

The words "Aetna Iron Works" import a corporation, and there can be no property by a partnership in a name as a "trade-mark," the

same importing a corporation. *Clark v. Iron Works*, 44 Ill. App. 510.

Statute prohibits license to a second corporation of substantially the same name as another. *Hazleton Roller Co. v. Tripod Boiler Co.*, 142 Ill. 494; s. c., 30 N. E. Rep. 339.

A foreign corporation cannot, in our courts, contest the right of a domestic corporation to the corporate name given it by this State. *Id.*

Fact that no sign is displayed at office will have very little significance, where business of corporation involves no dealing with the general public. *Rolling Stock v. People*, 147 Ill. 234; s. c., 35 N. E. Rep. 608.

"Elgin Creamery Company" and "Elgin Butter Company," not the same name. Issuance of a license to former notwithstanding previously licensing the latter, does not violate Corporation Act, which provides that the secretary of State shall not issue license to corporations having the same name. *Elgin Co. v. Elgin Creamery Co.*, 155 Ill. 127; s. c., 40 N. E. Rep. 616.

A proceeding against a corporation by its corporate name impliedly admits the regularity and legality of its existence. *Distilling Co. v. People*, 156 Ill. 418; s. c., 41 N. E. Rep. 188; *Nimmo v. Jackman*, 21 Ill. App. 607. And appearance of defendant by a corporate name is an admission of corporate existence. *Leguard v. Crane Co.*, 54 Ill. App. 149.]

§ 3. As soon as may be after the capital stock shall be fully subscribed, the commissioners shall convene a meeting for subscribers for the purpose of electing directors or managers, and the transaction of such other business as shall come before them. Notice thereof shall be given by depositing in the post-office, properly addressed to each subscriber, at least ten days before the time fixed, a written or printed notice, stating the object, time and place of such meeting. In all elections for directors or managers of corporations organized under this act, every subscriber or stockholder shall have the right to vote in person or by proxy, for the number of shares owned or subscribed by him, for as many persons as there are directors or managers to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors or managers multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner. It shall be lawful for any such corporation, by resolution of the stockholders, to divide its board of directors or managers into three classes, numbered consecutively, the term of office of the first class to expire on the day of the annual election of said company then next ensuing; the second class one year thereafter, and the third class two years thereafter. At each annual election after such classification, the stockholders of such company shall elect, for a term of three years, a number of directors or managers equal to the number in the class whose term expires on the day of such election. All other vacancies to be filled in accordance with the by-laws of the corporation.

See Const., art. XI, § 3. Meeting of officers, § 20, post. Executors, etc., may vote. § 24.

## Certificate of organization — R. S., ch. xxxii, §§ 4, 5.

Failure to elect directors. § 14, post. Stockholders' meetings. § 22, post. Meetings for change of number of directors, manner of voting, etc. §§ 59 et seq., post. Meetings for dissolution. §§ 49b-49d, post. Same for changing name, etc. § 50, post. Rights of purchasers on sale by execution. Ch. 77, § 56.

[Fraudulent organization, constructed lines belonged to the bona fide stockholders. *Terwilliger v. Tel. Co.*, 59 Ill. 249.

Right to vote by proxy. *People v. Crossley*, 69 Ill. 195.

Where property assigned, under a creditor's bill, includes corporate stock the court may order defendant to execute such power as will enable the assignee to vote the stock. *Atkinson v. Foster*, 27 Ill. App. 63.]

§ 4. The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the foregoing section, a copy of the subscription list, and the names of the directors or managers elected, and their respective terms of office, which report shall be sworn to by at least a majority of the commissioners, and shall be filed in the office of the secretary of State. The secretary of State shall thereupon issue a certificate of the complete organization of the corporation, making a part thereof a copy of all papers filed in his office in and about the organization of the corporation, and duly authenticated under his hand and seal of State, and the same shall be recorded in a book for that purpose, in the office of the recorder of deeds of the county where the principal office of such company is located. Upon the recording of said copy, the corporation shall be deemed fully organized and may proceed to business. Unless such company shall be organized and shall proceed to business as provided in this act, within two years after the date of such license, then such license shall be deemed revoked, and all proceedings thereunder void.

Charter forfeited for failure to organize. Const., art. XI, § 4. As to future organization. § 48, post. Organization of combinations prohibited. Ch. 38, § 269b; see § 53, post.

[Before corporation can contract, it must have a full and complete organization. *Gent v. Ins. Co.*, 107 Ill. 652; see *Washburn v. Roesch*, 13 Ill. App. 288.

Until the certificate of secretary of State of complete organization is recorded in the county there is no corporation in esse, capable of doing business or contracting liabilities. *Cresswell v. Oberly*, 17 Ill. App. 284.

A corporation is not authorized to do business until record of the secretary of State's certificate of complete organization. *Curran v. Bradner*, 27 Ill. App. 582.

A fraudulent recording of certificate of complete organization, contrary to the agreement of incorporators, is of no effect. *Id.*

The mere fact that a court is required to find certain essential facts preliminary to the formation of a corporate body does not make that body when formed, the creature of a court. *Huston v. Clark*, 112 Ill. 349.

An act of incorporation being declared a public

act, courts take judicial cognizance thereof. *Nimmo v. Jackman*, 21 Ill. App. 607.

In equity a corporation is a trustee for the benefit of creditors and stockholders. *St. L., etc., Co. v. Sandoval, etc., Co.*, 116 Ill. 172; s. c., 5 N. E. Rep. 370.

Persons composing a corporation, under the laws of Illinois, becoming incorporated under the laws of another State; the two corporations are separate and distinct—one cannot form an integral part of the other. *Drum. Tob. Co. v. Randle*, 114 Ill. 425; s. c., 2 N. E. Rep. 536.

An association may be regarded as a corporation when there is a law authorizing the creation of a corporation of its class and powers, an attempt, in good faith, to comply with the law, a user of the rights conferred, and but a technical failure therein. *Hudson v. G. H. Semin.*, 113 Ill. 625; *Miami P. Co. v. Hotchkiss*, 17 Ill. App. 626.

A statute confirming a city ordinance granting rights to a railway company is a legislative recognition of corporate existence. *McCarney v. R. R. Co.*, 112 Ill. 624.

A statute passed, amending a charter, clearly recognizing corporate existence, confirming acquisitions and enlarging powers constituting, in effect, a new charter, waives prior grounds of forfeiture. *People v. Ottawa Hydr. Co.*, 115 Ill. 285; s. c., 3 N. E. Rep. 413.

The action of the secretary of State in issuing a license and certificate of organization to a corporation is ministerial. *People v. Chicago G. T. Co.*, 130 Ill. 268; s. c., 22 N. E. Rep. 798.

Failure to file certificate with county recorder does not detract from the powers of the corporation or lessen the obligation of stockholders. Neither the corporation nor its officers or stockholders can be heard to deny the corporate existence because of such failure. *B. & T. Co. v. Gade*, 55 Ill. App. 181.

Powers of a corporation before the recording of final certificate. *B. & T. Co. v. Gade*, 55 Ill. App. 182.

As a condition precedent to the right of corporation to proceed to business, certificate of secretary of State should be filed in office of county recorder where principal office is located, in order that persons dealing with the corporation may have an easy and public inspection of its basis of organization. *Loverin v. McLaughlin*, 46 Ill. App. 375.

Under former statute requiring certificate of completion of organization to be filed with secretary of State, omission thereof was held not fatal to organization. *Cross v. Mill Co.*, 17 Ill. 54.

Omission to file certificate with secretary of State does not prevent corporate action nor make the stockholders liable as partners. It can only be raised in direct proceedings. *Tarbell v. Page*, 24 Ill. 46; *Baker v. Admr.*, 32 Id. 79. Quo warranto is necessary where corporate body assumes powers which, from defective organization, it cannot legally exercise. *Seire facias* is proper where a legal body capable of acting, abuses its powers. *Id.*

Regularity of organization cannot be questioned collaterally. *Thompson v. Candor*, 60 Ill. 244.

The recording of the certificate of complete organization as required by above section is a condition precedent to the right to do business. *Loverin v. McLaughlin*, 44 N. E. Rep. 90. And, independently of statute, directors who exercise corporate powers without performing precedent conditions are personally liable as partners. *Id.*

§ 5. Corporations formed under this act shall be bodies corporate and politic for the period for which they are organized:

[What the law makes a corporation it is. *Bank v. Godfrey*, 23 Ill. 602.

The integral parts of a manufacturing corporation are at least three stockholders. *Stowe v. Flagg*, 72 Ill. 397.

The essence of a corporation exists in its capacity (1) to have perpetual succession, under a special name and in an artificial form; (2) to take

and grant property, contract obligations, sue and be sued by its corporate name, as an individual; and (3) to receive and enjoy, in common, grants of privileges and immunities. The first two are the franchises of the corporators. The third is the franchise of the corporation. *Snell v. Chicago*, 133 Ill. 139; s. c., 24 N. E. Rep. 532.

The recognition, by the legislature by a subsequent act, of the existence and right to act of a corporation therefore organized under a void charter, and which relieves such corporation of a condition imposed on it by the invalid charter and refers to its acts, purges the illegality of corporate acts theretofore performed. *Snell v. Chicago*, 133 Ill. 427; s. c., 24 N. E. Rep. 532.

The alteration of the symbol "&" from a business sign and the labels upon the bottles used in a drug store, printed in small letters, is not notice that a copartnership has become a corporation, the place of business, etc., remaining the same. *Roof v. Morrisson*, 37 Ill. App. 43.]

### (1) May sue and be sued;

Service of summons on corporation. Ch. 79, § 23. Evidence. Ch. 51, §§ 15-16. Judgments and executions. Ch. 77, §§ 52 et seq. Process, how served. Ch. 110, §§ 5-11. Suits against stockholders. § 25, post. Attachment. Ch. 11, § 1. Proceedings on dissolution. § 149 et seq., post. Quo warranto, proceedings in. Ch. 112, §§ 1-7. After expiration of charter, may prosecute and defend suits. § 11, post. Copy of charter, evidence. § 27, post. Change of name, place of business, etc., not to affect suits pending. § 56, post.

[Corporation may institute suits in the courts of other States. *Bank v. Montgomery*, 2 Seam. 422. Before corporation can contract, it must have a full and complete organization. *Gent v. Ins. Co.*, 107 Ill. 652; see *Washburn v. Roesch*, 13 Ill. App. 268. Before a corporation can be made a garnishee, the answer must be sworn to. *Oliver v. R. R. Co.*, 17 Ill. 587.

Where corporation refuses to discharge an obligation which the law imposes it may be held liable civilly. *Seagraves v. City*, 13 Ill. 366; *R. R. Co. v. Miller*, 43 id. 199. An action of trespass for assault and battery will lie against a corporation. *R. R. Co. v. Dalby*, 19 Ill. 353. And for tort. *Harlem v. Emmert*, 41 id. 329. And for malicious prosecution. *S. E. & T. Co. v. Green*, 25 Ill. App. 106. Corporation liable in trespass, trover in case for malfeasance, and case for non-feasance. *Wolf v. Boettcher*, 64 Ill. 316.

There is no rule of law which prohibits a shareholder or officer of a company from suing or being sued by it. *Merrick v. Coal Co.*, 61 Ill. 472. Mandamus by railway company, to compel the delivery of bonds, proper. *Macoupin Co. v. People*, 58 Ill. 191.

A bill to enjoin the organization of a second corporation with the same or a similar name as that of an existing corporation, to engage in the same business is only sustained upon evidence — satisfactory — that such incorporation will injure the prior company. *Drum. Tob. Co. v. Randle*, 114 Ill. 425; s. c., 2 N. E. Rep. 536.

To enforce a right against a corporation, the right sought being against the stockholders as individuals, they are necessary parties. *Tel. Co. v. Gray*, 23 Ill. App. 72.

Wherever a cause of action lies in behalf of a corporation against its directors, etc., for malfeasance or misfeasance, and the corporation refuses to prosecute such suit, a stockholder, for himself and others similarly situated, may maintain suit. *Chicago v. Cameron*, 22 Ill. App. 91.

Question of capacity to sue must be raised by demurrer or plea in abatement. Id.

A corporation has a right of action on a note payable to an officer thereof not named. *Friedline v. Trustees*, 23 Ill. App. 494.

An information which attempts to set out persons' title to be a corporation, and when taken in connection with a public law shows such title good, is bad and demurrable. *People v. Ottawa Hydr. Co.*, 115 Ill. 285; s. c., 3 N. E. Rep. 413.

De facto existence need only be proved as against plea of nul tiel corporation. *Cozzens v. Chicago II. P. R. Co.*, 48 N. E. Rep. 788.

A de facto corporation may, ordinarily, sue or be sued. *Sch. Dir. v. Sch. Dir.*, 135 Ill. 470; s. c., 28 N. E. Rep. 49; *A. L. S. C. Co. v. Stock Exch.*, 41 Ill. App. 151.

A foreign corporation may maintain an action for libel, in this State. *Jewelers' M. Agency v. Douglass*, 35 Ill. App. 627.

A private corporation formed, by voluntary agreement, for private purposes is liable, in a civil action, for its negligence or tort. *Elmore v. Drain. Com.*, 135 Ill. 273; s. c., 25 N. E. Rep. 1010.

A simple contract creditor cannot maintain a bill in equity to obtain a judgment against a corporation. *Brabrook T. Co. v. Belding*, 40 Ill. App. 329; *Taylor Co. v. Woolverton*, 37 Ill. App. 362.

As a rule the creditors of a corporation must enforce their legal claim at law. They can obtain relief in equity only after their legal remedies have been exhausted. *Brabrook T. Co. v. Belding*, supra.

Judgment by confession on notes executed, with the warrants attached, by the officers of a corporation cannot be attacked, in equity, in the absence of injustice and fraud. *Henkleman v. Peterson*, 40 Ill. App. 541.

In such cases charges of fraud and conspiracy made in general terms, not impeaching the bona fides of the debts on which the notes are based, avail naught. Id.

Where nothing appears to impeach the justice of a judgment, it will not be set aside, in equity, because it may appear that the officers of a corporation for which the note was made were not authorized to make it. *Atwater v. Bank*, 40 Ill. App. 503.

It is no more necessary, in a declaration, to allege that a corporation knows what it has or has not done than to allege the same thing of a natural person. The acts or non-action of its servants, within the sphere of their duty, are its acts or omissions. *R. R. Co. v. Hines*, 132 Ill. 168; s. c., 23 N. E. Rep. 1021.

A manufacturing corporation which has ceased to transact business except to turn over to other manufacturers, for a commission, any orders it may receive, has no ground to stand upon in seeking to restrain a former stockholder from following the business that the company at some time did on his own account and from stating in his advertisements that the company is out of business. The dormant corporation cannot restrain him from prosecuting his business. *Shonk v. Shonk T. P. Co.*, 37 Ill. App. 21.

Where a bill is filed against a corporation and its directors, and afterward dismissed as to directors, the result is same as if they had not been named therein. *Taylor Co. v. Woolverton*, 37 Ill. App. 361.

Stockholder not a competent witness for defendant corporation, sued for negligently causing death of intestate. *Ice M. Co. v. Keifer*, 134 Ill. 495; s. c., 25 N. E. Rep. 799.

No judgment at law is necessary to determine that parties filing a bill to recover under § 16 are creditors. They may establish that fact, and the amount of the indebtedness, by an original bill in chancery. *Woolverton v. Taylor Co.*, 43 Ill. App. 425.

Where no plea of nul tiel corporation has been filed, it is not necessary for a plaintiff corporation to make proof of its existence. *Paper Co. v. K. & L. Co.*, 43 Ill. App. 566.

Appearance of defendant by a corporate name is an admission of corporate existence. *Legnard v. Crane Co.*, 54 Ill. App. 149. Appearance by a plaintiff as a corporation is an assertion that it is a corporation, to be denied only by a special plea of nul tiel corporation. Id.

When nul tiel corporation is not a proper plea. *Trogdon v. Stone Co.*, 53 Ill. App. 206.

Sue and be sued; seal — R. S., ch. xxxii, § 5, (1), (2).

Proof of corporate existence not necessary when it is shown that defendant has repeatedly recognized corporate existence of plaintiff. *Paint Co. v. Ruggles*, 48 Ill. App. 406.

A corporation may not recover back moneys paid by it for services rendered before its organization, whether in a direct suit or by way of set-off. *Lumber Co. v. Scott*, 46 Ill. App. 285.

When stockholder, either individually or on behalf of himself or other stockholders, may maintain suit against wrongdoing directors or officers. When corporation is necessary party to such suit. *Bruschke v. Der Nord, etc.*, 145 Ill. 433; s. c., 34 N. E. Rep. 417.

When receiver for insolvent national bank may maintain an action on a note payable to the bank. *Fire-Proofing Co. v. Bank*, 155 Ill. 481.

Demand on managers of a corporation to bring suit not necessary when it is shown that such demand would have been unavailing. *Higgins v. Lausning*, 154 Ill. 301; s. c., 40 N. E. Rep. 362.

A proceeding against a defendant corporation by its corporate name impliedly admits the regularity and legality of its corporate existence. *Distilling Co. v. People*, 156 Ill. 448; s. c., 41 N. E. Rep. 188.

Limitation of rule that existence of de facto corporation cannot be questioned collaterally. *Trust Co. v. Minnesota Co.*, 157 Ill. 641; s. c., 42 N. E. Rep. 153.

An association whose name implies a corporate body, and which has authenticated its acts by a common seal and exercised corporate powers, is estopped to deny its corporate existence. *Fitzpatrick v. Rutter*, 160 Ill. 282; s. c., 43 N. E. Rep. 302.

A return nulla bona of an execution against a corporation is not essential to an action in equity to set aside a fraudulent deed, where the corporation is insolvent and in process of winding up. *Blair v. Steel Co.*, 159 Ill. 350; s. c., 42 N. E. Rep. 895.

When officers of a corporation deal wrongfully with its property to the injury of stockholders, the latter may maintain a bill against the company and its officers for relief. *Green v. Hedenberg*, 159 Ill. 489; s. c., 42 N. E. Rep. 851.

Where there is a reasonable certainty that a demand upon the officers of a corporation to bring action would be unavailing, stockholders may proceed without such demand. *Id.*

A pledgee, as collateral security, of shares of stock in a corporation may, as any other stockholder, maintain a bill against the company and its officers for relief against a misappropriation of corporate funds, by which its security is impaired. *Id.*

An instrument purporting to be a bill of sale from a corporation, executed by its vice-president, and corporate seal attached, is admissible to show the transfer of the property therein mentioned, although there is no proof that the vice-president was authorized to execute it. *Springer v. Bigford*, 160 Ill. 495; s. c., 43 N. E. Rep. 751.

A corporation which has, in fact, consolidated with another, is estopped to assert that the proceedings for consolidation were not in accordance with the terms of the statute, in an action against it to recover the amount of a judgment against the other corporations on the ground that there was a consolidation. *Ry. Co. v. Ashling*, 160 Ill. 373; s. c., 43 N. E. Rep. 357.

The actual or virtual refusal or neglect of a corporation to protect the rights of a stockholder entitles him to relief in equity. *Farwell v. Tel. Co.*, 161 Ill. 522; s. c., 44 N. E. Rep. 891.

Stockholder can maintain an action against a receiver and the corporation and others, to assert his rights, without a request that the receiver bring such suit, and his refusal to do so. *Id.*

What conduct of receiver is equivalent to refusal. *Id.*

A corporation as such acts through its officers and agents. Its appearance in legal proceedings may be entered by counsel, and when done, a presumption of authority arises. *Ins. Co. v. Kennedy*, 57 Ill. App. 136.

Where an action is brought against an insurance

company for trespass committed by its agents, the burden of proof is upon the plaintiff to show that the company authorized, continued or ratified the acts of the agents. *Matthews v. Ins. Co.*, 64 Ill. App. 280.

President of a corporation has no authority to execute a power of attorney authorizing the confession of a judgment against it, but where suit is regularly brought against corporation and service duly had upon it, if claim is just and corporation has no defense it is not the duty of the president to deny its justice or to defend it. *Boston v. Fisher*, 59 Ill. App. 400.

When corporation is sued, president has power to employ an attorney to look after its interests. *Id.*

Where a broker, in pursuance of a contract with a syndicate, made a sale of certain street car lines to a railroad company, the fact that company was not duly incorporated is no defense to a suit by broker for his commission. *Smith v. Mayfield*, 60 Ill. App. 206.

Judgment confessed against a corporation upon a note signed by the president and secretary, but not under seal of the corporation, and without proof being filed with a cognovit that the president and secretary had authority to sign any power of attorney to confess a judgment, is void. *Bailey v. Snyder*, 61 Ill. App. 472.

President, treasurer or secretary of a corporation can execute a power of attorney and confess a judgment against the corporation only where such power is conferred by the board of directors. They have no such power by virtue of their office. *Id.*

Corporations become liable the same as individuals where facts exist from which the rule of principal and agent is applied. *Loeb v. Stout*, 61 Ill. App. 166.

Proof of the averment that the defendant is a corporation is not necessary under our practice unless challenged by plea of null tiel corporation. Where defendant, by his peculiar form of pleading, admits the corporate existence of plaintiff, he cannot afterward deny such corporate existence. *Wheatley v. Chicago Bank*, 64 Ill. App. 612.

Where a party litigant deals with his adversary as a corporation, he admits its corporate character. *Hickox v. Dawes*, 64 Ill. App. 630.]

(2) May have a common seal, which they may alter or renew at pleasure;

Records, how certified, seal affixed. Ch. 51, §§ 15-16.

[Where the act did not authorize a seal, no seal necessary. *Dennis v. Maynard*, 15 Ill. 477.

A corporation can only act under its corporate seal, and by its president and secretary. *Ins. Co. v. Schettler*, 38 Ill. 166; *Board, etc. v. Greenbaum*, 39 id. 609; *R. R. Co. v. Johnson*, 40 id. 35; *R. R. Co. v. F. L. & T. Co.*, 49 id. 331; *Bills v. Stanton*, 69 id. 52; *U. S. M. Co. v. Gross*, 93 id. 483.

A corporation may adopt any seal which is convenient for the occasion. *Danv. Sem. v. Mott*, 136 Ill. 294; s. c., 28 N. E. Rep. 51.

It must, however, be shown to have been adopted. So, it must be affixed, as the corporate seal, by an officer or agent authorized to affix it. *Id.*

The common seal of a corporation appearing affixed to an instrument and the signatures of the proper officers being proved, courts are to presume that the officers did not exceed their authority. The seal is prima facie evidence that it was affixed by proper authority. *McDonald v. Chisholm*, 131 Ill. 281; s. c., 23 N. E. Rep. 596.

A note of a corporation properly executed and attested by the corporate seal, and as to the regularity of which there is as much parol evidence in its favor as against it, is valid prima facie. *Chisholm v. McDonald*, 30 Ill. App. 180.

A deed of conveyance of land by a corporation must be executed in the corporate name and at-

## Power to hold property and to borrow — R. S., ch. xxxii, § 5, (3), (4).

tested by the corporate seal. *Danv. Sem. v. Mott*, supra.

The execution of bonds, by the president and secretary, and a deed of trust to secure them under the corporate seal is prima facie evidence of authority to execute them, without production of a resolution of authority. *Bank v. Schott*, 135 Ill. 696; s. c., 26 N. E. Rep. 640.

A lease of premises "between J. B., party of the first part, and the Rochester Boot and Shoe company, by N. N., president, party of the second part," the covenants all by the "party of the second part" and the testimonium clause signed by "N. N., president with seal. Although at the time of the execution of the lease the company was not, in fact, organized, and, therefore, could not authorize an agent in the absence of apt words in the contract to bind him, N. N. is not personally bound by the writing. *Neulan v. Biddle*, 37 Ill. App. 34.

Where a promissory note and warrant of attorney are executed in the name and under the seal of a corporation, it will be presumed that such instruments were executed by authority of the company. *McDonald v. Chisholm*, 131 Ill. 281; s. c., 23 N. E. Rep. 596.

The mode of authenticating the act of a corporate body, which uses a seal, is to affix the seal, with a declaration that it is the corporate seal, verified by the signatures of the president and secretary. *Mott v. Danv. Sem.*, 129 Ill. 412; s. c., 21 N. E. Rep. 927.

The doctrine of common law as to use of seal practically obsolete. Seal now necessary only in cases where one is required of an individual. *Green v. Blodgett*, 55 Ill. App. 556.

Corporate seal not essential to validity of a contract of subscription which is within the powers of a corporation to make. *Green v. Blodgett*, 159 Ill. 169; s. c., 42 N. E. Rep. 176.

Right to have a common seal is necessarily an inseparable incident to corporations, regardless of whether or not such right is given by charter or act of incorporation. *Fireman v. Cramer*, 60 Ill. App. 213.

Seal of corporation affixed to an instrument is prima facie evidence of assent of corporation when signature of president and custodian of its seal attached to the instrument is shown to be genuine. *Bailey v. Snyder*, 61 Ill. App. 472.]

(3) May own, possess and enjoy so much real and personal estate as shall be necessary for the transaction of their business, and may sell and dispose of the same when not required for the uses of the corporation.

Annual statement of real estate. § 17, post.  
Foreign corporation, real estate. § 26, post.  
Loans on real estate by foreign corporation. § 67, post.

[Limit of the right to acquire and hold title to real estate. *Alexander v. Club*, 110 Ill. 65.

At common law real estate of a corporation reverts to the owners upon dissolution, but equity will distribute it for the benefit of its creditors. *Life Assn. v. Fassett*, 102 Ill. 315.

Power to hold real estate is a question between the corporation and the State, with which the grantor has no concern. *Hough v. Cook Co.*, 73 Ill. 23; *Barnes v. Suddard*, 117 Ill. 239; s. c., 7 N. E. Rep. 477; *Hamsher v. Hamsher*, 132 Ill. 286; s. c., 23 N. E. Rep. 1123.

Power of acquiring and transferring property sustained. *Reed v. Bradley*, 17 Ill. 321.

Corporation may take mortgages on real estate as security for debts. *Stevens v. Pratt*, 101 Ill. 206. And may loan money. *Id.* And may borrow money and give mortgage. *Thomas v. Ry. Co.*, 104 Ill. 462. The same powers are vested in foreign corporations. *Assurance Co. v. Scammon*, 102 Ill. 46; *Buggy Co. v. Graves*, 108 Ill. 459.

A subsequent general law will limit capacity of corporation to acquire and hold real estate. *St. P., etc. v. Germain*, 101 Ill. 440.

The power to sell securities does not include the power to mortgage them. *Morris v. Cheney*, 51 Ill. 451.

Corporation for pecuniary profit may acquire and hold real estate necessary to its business. *Barnes v. Suddard*, 117 Ill. 239; s. c., 7 N. E. Rep. 477.

A conveyance of lands by proper officers of a land company to trustees, the land having been conveyed to the corporation by stockholders, is ratified by the stockholders becoming stockholders in a new corporation, created on the transfer. *Hull v. Glover*, 126 Ill. 123; s. c., 18 N. E. Rep. 198.

A deed of a corporation not authenticated in the mode recognized by law is a nullity, and confers no rights whatever. *Mott v. Danv. Sem.*, 129 Ill. 413; s. c., 21 N. E. Rep. 927.

A bill of sale executed by the vice-president under the corporate seal is prima facie sufficient to pass the property. *Springer v. Bigford*, 55 Ill. App. 199.

Corporation making a purchase from its president is not chargeable with his knowledge of infirmities in his title to the property. *Higgins v. Lausinch*, 151 Ill. 304; s. c., 40 N. E. Rep. 362.

Corporation may purchase its own stock only when creditors are not injured. *Clapp v. Peterson*, 104 Ill. 26.

A note and mortgage to secure an existing indebtedness, executed by an officer of a corporation under authority conferred at a meeting of its board of directors, not regularly convened in accordance with its by-laws, the repudiation of it has not been authorized by the directors or stockholders of the corporation, becomes valid and binding by acquiescence and ratification. *Ashley v. Illinois*, 60 Ill. App. 180.

A proposition by a board of stockholders of a corporation as to the sale by them of the property of a corporation to the other stockholders and accepted by them, constitutes a valid contract. *Green v. Sellers*, 64 Ill. App. 505.

When it cannot be urged against the validity of a mortgage executed by a corporation that it contains special provisions not contained in the statutory form of mortgage. *Ashley Wire Co. v. Illinois Steel Co.*, 45 N. E. Rep. 410.

When a corporation held to ratify a mortgage executed by its board of directors. *Id.*

(4) They may borrow money at legal rates of interest, and pledge their property, both real and personal, to secure the payment thereof;

Foreign corporation may loan money. § 67, post.  
Rate of interest, corporation not to plead usury. Ch. 74, §§ 8-11.

[Power to mortgage regarded as an incident to the power to hold real estate. *Agl. Soc. v. Padlock*, 80 Ill. 263; *West v. Agl. Board*, 82 Ill. 205.

Corporation cannot avoid liability by questioning the authority of persons making the loan to it. *R. R. Co. v. Murray*, 15 Ill. 336.

Power "to borrow money and to mortgage or lease any of its property or franchise" does not give authority to assign and transfer any of its privileges and business. *Chicago Gas, etc., Co. v. People's Gas, etc., Co.*, 121 Ill. 534; s. c., 13 N. E. Rep. 169.

Presumed that one who holds a corporate bond payable to bearer rightfully owns the same, in the absence of proof to the contrary. *Land Co. v. Peck*, 112 Ill. 433.

Unless restricted by statute, corporations may contract debts to the extent of their credit. *Woolverton v. Taylor*, 132 Ill. 206; s. c., 23 N. E. Rep. 1007.

Neither is it, under all circumstances, bad management in a corporation to contract debts in excess of its capital stock. *Id.*

In mortgage given to secure bonds, the insertion of covenant implied by words "grant, bargain and sell" is not a fraudulent representation as to existing incumbrances on part of director



## Necessary powers — R. S., ch. xxxii, § 5, (5).

who did not sign mortgage, to preclude his claim on a prior mortgage of the company held by him. *Bank v. Schott*, 135 Ill. 670; s. c., 26 N. E. Rep. 640.

Recording of resolutions of directors authorizing an issue of corporate bonds does not give them the character of a deed or mortgage. *Bank v. Schott*, 34 Ill. App. 500.

Power of corporate officers to execute judgment notes for corporation may be shown by facts and circumstances. *Burch v. West*, 134 Ill. 263; s. c., 25 N. E. Rep. 658.

Defective execution of judgment note of corporation may be cured by subsequent action. *McDonald v. Chisholm*, 131 Ill. 289; s. c., 23 N. E. Rep. 596.

Proper form of execution of note of a private corporation. *Frankland v. Johnson*, 147 Ill. 529. Improperly executed, whether binding corporation or officer as an individual. *Id.*

A private corporation has implied power to contract debts when necessary or convenient in furtherance of its objects, and whenever it may contract a debt it may borrow money to pay the same and execute negotiable instruments secured by mortgage. *Ward v. Johnson*, 95 Ill. 215.

(5) And may have and exercise all the powers necessary and requisite to carry into effect the objects for which they may be formed;

Powers to be exercised by directors. § 6, post. Legislative powers reserved. § 9, post. Assuming powers without complying with this act. § 18, post.

[The by-laws of a corporation are binding upon no one but its members and officers. *Ward v. Johnson*, 95 Ill. 215.

Corporation can only act through its officers, or by expressly delegating its powers to others. *Hopkins v. R. C. L. Co.*, 72 Ill. 373.

Corporation has power in this State to assign notes. *McIntire v. Preston*, 19 Ill. 48.

Corporation can act only in the manner prescribed by the act of incorporation. *Betts v. Menard*, Breese, 335; *Petersburg v. Metzker*, 21 Ill. 205; *C. F. Col. v. Cooper*, 25 id. 148; *Kinzie v. Chicago*, 3 Ill. 187; *Fitch v. Pinckard*, 5 id. 69.

Every power that is not clearly granted to a corporation is withheld, and any ambiguity in the term of grant must operate against the corporation in favor of the public. *Trust Co. v. Minnesota Co.*, 157 Ill. 641; s. c., 42 N. E. Rep. 153. And it can exercise only such powers as are conferred, or are necessarily incident. *Caldwell v. City*, 33 Ill. 416; *City v. Rumpff*, 45 id. 90; *People v. Board of Trade*, id. 112; *Chicago Gas, etc., Co. v. People's Gas, etc., Co.*, 121 id. 534; s. c., 13 N. E. Rep. 169; *People v. Chicago Gas T. Co.*, 130 Ill. 283; s. c., 22 N. E. Rep. 798; *Mott v. Sem.*, 129 Ill. 413; s. c., 21 N. E. Rep. 927; *Rockhold v. Benev. Soc.*, 129 Ill. 456; s. c., 21 N. E. Rep. 794; *McCroly v. Chambers*, 48 Ill. App. 445. And parties dealing with it are chargeable with notice of such powers. *Durkee v. People*, 53 Ill. App. 397.

"All the power incident and useful to corporations," includes power to give chattel mortgage. *Badger v. B. P. Co.*, 70 Ill. 392; *Ward v. Johnson*, 95 id. 215; *Ward v. Farwell*, 97 id. 593; *N. W. F. Co. v. Hyde Park*, 70 id. 634.

Corporation has all the powers of an ordinary person as respects its contracts. *City v. Corwith*, 48 Ill. 423.

Distinction between municipal and private corporations in their power to contract debts. *Marshall Co. v. Cook*, 38 Ill. 44.

Corporation is estopped from denying its authority, when. *Bradley v. Ballard*, 55 Ill. 413; *C. B. Soc. v. Crowell*, 65 id. 453; *Ins. Co. v. F. S. Mfg. Co.*, 97 id. 537.

Corporation may transact all business relating to the legitimate objects of its existence. *Wood v. Whelen*, 93 Ill. 153.

But corporate powers must be warranted by statute. *Webster v. People*, 98 Ill. 343.

Powers of corporation organized under the laws of Iowa. *Reichwald v. Hotel Co.*, 106 Ill. 439; *Glover v. Wells*, 40 Ill. App. 353.

Corporation is bound by parol contract if acting within the scope of its authority. *R. R. Co. v. F. L. & T. Co.*, 49 Ill. 331. And by implied contracts. *Maher v. City*, 35 Ill. 266; *R. R. Co. v. F. L. & T. Co.*, 49 id. 331; *Ry. Co. v. Deitz*, 50 id. 210. But not for debts created before organization. *Mfg. Co. v. Conoley*, 72 Ill. 531.

Corporation cannot avoid liability by questioning the authority of the persons making the loan to it. *R. R. Co. v. Murray*, 15 Ill. 336.

Officers liable for wrongs done by their order. *Peck v. Cooper*, 112 Ill. 182.

The remedy against one for falsely assuming to act as an agent of a corporation is an action on the case and not on the contract made by him. *Hancock v. Yunker*, 83 Ill. 290.

Equity will restrain the acts of an existing corporation in excess of its powers or sought to be performed under invalid grant — as an invalid ordinance. *Atty.-Gen. v. R. R. Co.*, 127 Ill. 538.

Charter being permissive only — not imperative — and granting no exclusive privilege, the company is not bound to execute its franchise throughout the entire territory in which it may operate. *Peop. G. & C. Co. v. Chicago G. & C. Co.*, 20 Ill. App. 473.

Any private contract of a corporation engaged in business in which the public is interested, injurious or prejudicial to the public interests, is void. *Chicago Gas, etc., Co. v. People's Gas, etc., Co.*, 121 Ill. 534; s. c., 13 N. E. Rep. 169.

Corporation cannot plead ultra vires in defense of a contract fully performed by the other party, to its benefit. *Bank v. Brooks*, 22 Ill. App. 238; *Peop. G. & C. Co. v. Chicago G. & C. Co.*, supra.

The rule that contracts in partial restraint of trade are not valid does not apply to corporations engaged in a public business. *Chicago Gas, etc., Co. v. People's Gas, etc., Co.*, 121 Ill. 534; s. c., 13 N. E. Rep. 169.

Under a general law a company is formed for the purpose of carrying on a "lawful business;" the law must determine what powers may be exercised as incident to such business. *People v. Chicago G. T. Co.*, 130 Ill. 287; s. c., 22 N. E. Rep. 798.

Whether the articles of association with its accompanying parts, including all papers certified, do or do not confer such rights and powers as the law authorizes, is a judicial question. *People v. Chicago G. T. Co.*, 130 Ill. 286; s. c., 22 N. E. Rep. 798.

The language of this section negatives the idea that a corporation can buy and hold stock of other companies. *Id.* To determine powers of a corporation organized under general law, certificate of promoters is to be looked to. One created by special statute, stature is looked to. *Rockhold v. C. M., etc., Soc.*, 129 Ill. 455; s. c., 21 N. E. Rep. 794.

Implied powers are presumed to exist to enable such bodies to carry out the express powers granted, and to accomplish the purposes of their creation. *People v. Chicago G. T. Co.*, supra.

An incidental power is one that is directly and immediately appropriate to the execution of the specific power granted. *Id.*

Corporation publishing a newspaper can make certificate of publication of a notice required by law to be published. *Maass v. Hess*, 41 Ill. App. 283.

Corporation having entered into contract and enjoyed the benefits is estopped to plead defense of ultra vires. *Helms B. Co. v. Flannery*, 137 Ill. 318; s. c., 28 N. E. Rep. 248. Unless transaction is criminal or against public policy. *Owens v. Stapp*, 32 Ill. App. 688.

Agreement that patentable inventions and improvements developed by any member of a corporation "shall be patented in the name and for the benefit of such company," continues no longer than corporation exists. *Car Co. v. Car Line*, 37 Ill. App. 290. Or than person continues to be a member of such corporation. *Id.* 292.

Contracts between a corporation and the controlling majority of its own stockholders are not sanctioned by courts. *Rigdon v. Walcott*, 43 Ill. App. 352.

A stockholder contracting with a corporation is not bound to take notice of its by-laws. *Bath Co. v. Bath Co.*, 50 Ill. App. 681.

Contract signed by vice-president when president was in town, validly of. *Id.*

Corporation authorized to conduct a lumber business is legally incapable of being a stockholder in a telegraph company. *Peshigo Co. v. Tel. Co.*, 50 Ill. App. 624.

A contract void as against a statute or public policy cannot become valid through an estoppel. *Durkee v. People*, 53 Ill. App. 397.

Contract of corporation to advertise in a public newspaper is not ultra vires. *Green v. Blodgett*, 55 Ill. App. 556.

It is the duty of a corporation to use ordinary care to make its works and appliances reasonably safe and fit for their intended uses. *Mining Co. v. Admr.*, 48 Ill. App. 616.

The power of two or more corporations to make contracts. *Ry. Co. v. Ayres*, 140 Ill. 644; s. c., 30 N. E. Rep. 687.

It is a fundamental principle in the laws of corporations, that a majority of stockholders shall control policy and regulate and control business, and to this each stockholder impliedly agrees. *Wheeler v. Iron & Steel Co.*, 143 Ill. 197; s. c., 32 N. E. Rep. 420.

A court of equity will not assume to control a policy or business methods of a corporation, although it may be seen that a wiser policy might be adopted. *Id.*

Extent of its business does not affect the character of a corporation, so that it may be declared public. *Comm. Co. v. Stock Exchange*, 143 Ill. 210; s. c., 32 N. E. Rep. 274.

It is well settled that a corporation cannot avail itself of defense of ultra vires when a contract has been executed and it has had the full benefit thereof. *Kadish v. L. & B. Assn.*, 151 Ill. 531; s. c., 38 N. E. Rep. 236. But while contracts ultra vires remain executory, courts will interfere and prevent their enforcement on application of a shareholder, or other authorized person. *Id.* The bill of ultra vires should not, as a general rule, prevail, whether interposed for or against a corporation, when it will not advance justice. *Id.*

Corporations may become members of, and borrow money from, building and loan associations. *Id.*

If corporation has no power to make a contract, it has not power to ratify or confirm it. *Durkee v. People*, 53 Ill. App. 397; 155 Ill. 354; s. c., 40 N. E. Rep. 626.

A corporation cannot enter a partnership. *Bishop v. American Co.*, 104 Ill. 284; s. c., 41 N. E. Rep. 765.

A corporation organized to manufacture and deal in merchandise may make a subscription for the purpose of securing the location of post-office adjoining a building owned by it, where its effect will be to bring its business prominently before the public and increase its customers and sales. *Green v. Blodgett*, 159 Ill. 163; s. c., 42 N. E. Rep. 176.

Exercise of a power expressly conferred upon a corporation by its by-laws, cannot be questioned by the stockholders. *Pioneer Co. v. Brockett*, 58 Ill. App. 204.

Ratification by a corporation of a contract made in its name, whether sealed with its corporate seal, or not, will be implied by the acts of the corporation and will be inferred from facts and circumstances as in the case of individuals. *Brewing Co. v. Ahlgren*, 63 Ill. App. 475.

There may be ratification by acquiescence and general conduct under a knowledge of the facts, as well as by express action. Corporations, like individuals, may be bound by a ratification by its acts, and such ratification need not be in writing, even though it be a ratification of an act done without authority. *Greer v. Sellers*, 61 Ill. App. 505.

When benefits have been received under an ultra vires contract, relief is not granted upon the basis that a valid or merely voidable contract has been entered into, but the act not being malum in se, the parties will, as near as may be, be restored to their original condition. *McCormick v. Bank*, 61 Ill. App. 34.

When corporation can and cannot avail itself of the defense of ultra vires. *McNulta v. Bank*, 45 N. E. Rep. 954.]

Provided, however, That all real estate, so acquired in satisfaction of any liability or indebtedness, unless the same may be necessary and suitable for the business of such corporation, shall be offered at public auction, at least once every year, at the door of the courthouse of the county wherein the same may be situated, or on the premises to be sold, after giving notice thereof for at least four consecutive weeks in some newspaper of general circulation published in said county; and if there be no such newspaper published therein, then in the nearest adjacent county where such newspaper is published; and said real estate shall be sold whenever the price offered for it is not less than the claim of such corporation, including all interest, costs and other expenses; And, provided, further, That in case such corporation shall not, within such period of five years, sell such land, either at public or private sale, as aforesaid, it shall be the duty of the State's attorney to proceed by information, in the name of the People of the State of Illinois, against such corporation, in the circuit court of the county within which such land, so neglected to be sold, shall be situated, and such court shall have jurisdiction to hear and determine the fact, and to order the sale of such land or real estate at such time and place, subject to such rules as the court shall establish. The court shall tax as the fees of the State's attorney such sum as shall be reasonable; and the proceeds of such sale, after deducting the said fees and costs of proceedings, shall be paid over to such corporation. The provisions of this section shall apply to and be binding upon all corporations now existing by virtue of any special charter granted by this State.

See § 17, post. Real estate of foreign corporations. § 26, post. Foreign corporation may buy real estate. § 67, post.

§ 6. The corporate powers shall be exercised by a board of directors or managers: Provided, The number of directors or managers shall not be increased or diminished, or their term of office changed, without the consent of the owners of a majority of the shares of stock. The officers of the company shall consist of a president, secretary and treasurer, and such other officers and agents as shall be determined by the directors or managers, and the directors or managers may adopt by-laws for the government of

## Directors — R. S., ch. xxxii, § 6.

the officers and affairs of the company: Provided, They are not inconsistent with the laws of this State. The directors or managers may require of the officers and agents bonds, with such sureties and conditions as they shall deem proper, and may remove any officers when the interest of the corporation shall require. The officers shall hold their respective offices for the period provided by the by-laws.

Meeting of officers. § 20, post. Failure to elect officers, not to dissolve. § 14, post. Personal liability of directors and officers. §§ 16, 19, 21, post. Changing number of directors. §§ 59 et seq., post. Corporations acting by attorney. § 66, post.

**[Directors.]**—Persons owning a majority of the stock have a right to combine and secure the board of directors. *Faulds v. Yates*, 57 Ill. 416.

Directors are trustees of funds for stockholders. *Holder v. Ry. Co.*, 71 Ill. 106; *Chetlain v. Ins. Co.*, 86 Ill. 220; *Perry v. Pearson*, 135 Ill. 236; s. c., 25 N. E. Rep. 636; *Ellis v. Ward*, 137 Ill. 520; s. c., 25 N. E. Rep. 530.

Powers of directors to purchase indebtedness, and to deal with the property of the corporation. *Harts v. Brown*, 77 Ill. 225.

A certificate signed by persons in compliance with the statute, with certificate of the county clerk appended, is evidence of the election of the directors. *Skinner v. Lake View Ave. Co.*, 57 Ill. 151.

Railroad director not to receive compensation for his services, unless authorized by law or resolution. *R. R. Co. v. Miles*, 52 Ill. 174; *Merrick v. Coal Co.*, 61 Ill. 472; *R. R. Co. v. Sage*, 65 Ill. 328; *Cheney v. Lafayette B. & M. Ry. Co.*, 68 Ill. 570; *Gridley v. Ry. Co.*, 71 Ill. 200.

The same rule applies to other private corporations. *Linen Co. v. Hough*, 91 Ill. 63.

A director or stockholder may deal with corporation as other persons may. *Beach v. Miller*, 23 Ill. App. 151; *Bank v. Schott*, 34 Ill. App. 508.

Directors of an insolvent corporation cannot apply its assets to an indebtedness to himself to the exclusion of other creditors. *Adams v. C. W. Print. Co.*, 27 Ill. App. 313. Directors guilty of mismanagement and malfeasance, court may appoint a receiver and order him to sue for unpaid subscriptions to stock. *Tel. Co. v. Gray*, 122 Ill. 634; s. c., 14 N. E. Rep. 214.

A contract for the sale of corporate stock between codirectors of the company does not so depend on trust or confidential relations between them that either has an option to set aside, independently of the question of fraud in the transaction. *Perry v. Pearson*, 135 Ill. 236; s. c., 25 N. E. Rep. 636. Directors owe a fiduciary duty to stockholders in dealings which may affect the stock. *Id.*

Ergo, they may not so manage the corporate business or deal with property as to lessen the value of the stock that they themselves may purchase it at a low value. *Perry v. Pearson*, supra.

In the absence of statutory requirements one who is not a stockholder may be a director. *Fey v. P. Watch Co.*, 32 Ill. App. 631.

The directors and officers of a solvent corporation are trustees and agents of the company and its stockholders only. They owe no duties or obligations to the creditors preventing them from dealing with the corporation. *Bank v. Schott*, 135 Ill. 672; s. c., 26 N. E. Rep. 640; *Roseboom v. Whittaker*, 132 Ill. 87; s. c., 23 N. E. Rep. 339; *Beach v. Miller*, 130 Ill. 170; s. c., 22 N. E. Rep. 464.

An officer or agent may deal with the corporation where it is represented, in the transaction, by other agents. *Matson v. Alley*, 41 Ill. App. 73.

But the moment a corporation becomes insolvent, its directors occupy a different relation. The as-

sets of the corporation must then be regarded as a trust fund for the payment of all its creditors and the directors may occupy the position of trustees. A fiduciary relation then existing they may, with propriety, be prohibited from purchasing the trust property. *Roseboom v. Whittaker*, supra; *Beach v. Miller*, supra; *Bank v. Burch*, 40 Ill. App. 515; *Atwater v. Bank*, id. 503.

Corporate directors are trustees, having neither right nor power to appropriate or use the corporate funds to or for themselves, or to destroy, waste, misapply or give them away. *Ellis v. Ward*, 137 Ill. 520; s. c., 25 N. E. Rep. 530. Directors who wrongfully pay an outgoing president a salary for past services, not agreed to be paid for until after their performance—or apply corporate funds to discharge their own indebtedness—will be liable to creditors of corporation for amount of money misapplied. *Id.*

A director who purchases the property of an insolvent corporation to secure his own debt and takes possession thereof will take such property charged with a trust in favor of other creditors which equity will enforce. *Beach v. Miller*, 130 Ill. 173; s. c., 22 N. E. Rep. 464.

This, however, will not authorize another judgment creditor to levy his execution on the property in possession of such director under his purchase. *Id.*

Director who holds mortgage on corporate property will not waive his priority of lien by voting for issue of bonds. *Bank v. Schott*, supra.

On trial of indictment for wrongfully cutting trees upon land of a corporation, verbal consent of two trustees not admissible in evidence, when authority could only be given by action of board at a meeting. *Mettler v. People*, 36 Ill. App. 325; s. c., 135 Ill. 415; s. c., 25 N. E. Rep. 748.

There is no rule of law to compel a man to be a director of a private corporation against his will, and if elected may refuse to serve. *Oil Co. v. Morrison*, etc., 54 Ill. App. 531.

Director is not prohibited from lending money to his corporation and taking security therefor. *O'Donnell v. Steel Co.*, 53 Ill. App. 314. When such a loan is invalid. *Id.*

Director is bound to manage business in the interest of the stockholders alone, and not for his private emolument. *Gas Engine Co. v. Charter*, 47 Ill. App. 35. Without consent of stockholders he cannot become a contractor with the corporation or have any pecuniary interest in a contract between it and a third person. *Id.* But he may loan money to the corporation and take securities therefor. *Id.*

Directors authorized to sell corporate property cannot become its purchaser. *Cab Co. v. Yerkes*, 141 Ill. 320; s. c., 30 N. E. Rep. 667. Improper sale of corporate property by directors, how avoided. *Id.*

The public policy of this State, as declared by constitutional and statutory law, requires that a majority of directors of railroad corporation shall be residents, but no such requirement exists in case of any other corporation. Hence no ground of forfeiture of charter that all directors and officers of a corporation, other than a railroad company, have always been and still are non-residents. *Rolling Stock Co. v. People*, 147 Ill. 234; s. c., 35 N. E. Rep. 608.

Directors have no right, under any circumstances, to use their official position for their own individual benefit. *Hoffman v. Reichert*, 147 Ill. 274; s. c., 35 N. E. Rep. 527. If corporation is indebted to a director, he will have same rights and remedies as any other director, but he has no right to avail of his position to obtain possession of corporate property. *Id.*

Rights of officers or directors as purchaser of corporate property at judicial sale. *Id.*

Lease made by a corporation, through one of its directors, on the one part, with himself and another, on the other part, not void so as to be incapable of revocation. *Ry. Co. v. Carson*, 151 Ill. 444; s. c., 38 N. E. Rep. 140. Such lease not void, but only voidable. *Id.* Revocation of the act may be shown and inferred from facts and circumstances. *Id.*

A contract obtained through vote of an interested director not valid. *Higgins v. Lansingh*, 154 Ill. 394; s. c., 40 N. E. Rep. 362.

Contract of a corporation made by a director without assent not void, but voidable. *Ry. Co. v. Cass*, 51 Ill. App. 552. And, therefore, such contract may be ratified by the corporation. *Id.* A ratification need not be in writing. *Id.*

Directors of an insolvent corporation are trustees for its creditors, and will not be allowed to enable creditor to obtain advantage over others. *Pratt v. Tailoring Co.*, 51 Ill. App. 249.

All business relating to legitimate objects of the corporation may be transacted by directors without sanction of stockholders. *Wood v. Whelen*, 93 Ill. 173.

Directors of a railroad must be stockholders, and must be elected by stockholders. *Durkee v. Ashken*, 155 Ill. 441; s. c., 40 N. E. Rep. 625.

Notice to a director of a corporation while engaged in its business, such notice being concerning business he is engaged upon, is notice to corporation. *Bartlett v. Bank*, 57 Ill. App. 425.

**Officers and agents.** Officers will have no right to compensation if no provision is made therefor. *Halder v. Ry. Co.*, 71 Ill. 106; *Gridley v. Ry. Co.*, id. 200; *Ellis v. Ward*, 137 id. 518; s. c., 25 N. E. Rep. 530; *Invest. Co. v. Addison*, 46 Ill. App. 423. And cannot recover for services upon an implied contract. *Barry v. C. & C. Co.*, 52 Ill. App. 183.

Where evidence fails to show either an appropriation of labor, or an agreement to pay; no ground of recovery. *Ins. Co. v. Smith*, 65 Ill. 309; *R. R. Co. v. Sage*, id. 328.

A person occupying the position of superintendent, etc., will be presumed to have been duly appointed. *R. R. Co. v. Dalby*, 19 Ill. 353.

The president may perform all acts incident to the trust. *Mitchell v. Deeds*, 49 Ill. 416.

Contract entered into by agents or officers of a private corporation if ultra vires is not binding on the company so long as it remains executory. *R. R. Co. v. Thompson*, 103 Ill. 187.

Corporation will be liable for acts of officers and agents. *Lesh v. Walash Nav. Co.*, 14 Ill. 85; *Hinde v. Same*, 15 id. 72; *Ryan v. Dunlap*, 17 id. 40; *W. S. M. Co. v. Boyington*, 73 id. 534. But not for acts of individual members. *Bouton v. McDonough Co.*, 84 Ill. 384; *Peterson v. I. L. & L. Co.*, 6 Ill. App. 257.

The president can sue and recover for advances. *Merrick v. P. C. Co.*, 61 Ill. 472.

Corporation loses its general power of removal of employes, contained in its charter, if it makes a specific contract. *Trustees v. Shafer*, 63 Ill. 243.

The execution of a lease or a sealed instrument by the president, a good execution by the company. *N. W. D. Co. v. Brant*, 69 Ill. 658. But company may be bound by contract made by its agent, though not under seal. *Athens v. Thomas*, 82 Ill. 259.

Corporation not liable to punitive damages for gross negligence of its servants. *R. R. Co. v. Hammer*, 72 Ill. 347.

There is no rule of law which prohibits a shareholder or officer from dealing with the company in the same manner as a stranger. *Merrick v. Coal Co.*, 61 Ill. 472; *Beach v. Miller*, 23 Ill. App. 151; *B. & T. Co. v. Gade*, 55 id. 181. Or from suing or being sued by it. *Id.*

As to election of officers, see *People v. Devin*, 17 Ill. 84. As to their powers, see *Lark v. Woods*, 15 Ill. 256; *Dennis v. Maynard*, id. 479. The majority may act. *Id.*

Assignment by secretary of railroad company, of a note belonging to it, is prima facie the act of the company. *Frye v. Tucker*, 24 Ill. 181.

Note assigned by a corporation by indorsement of its corporate name; held, sufficient. *Templeton v. Hayward*, 65 Ill. 178.

Deed executed by vice-president, the office of president being vacant, presumed to be legally done and binding. *Smith v. Smith*, 62 Ill. 493; see *Sawyer v. Cox*, 63 id. 130. Contract signed by vice-president when president was in town, validity of. *Rath Co. v. Fan Co.*, 50 Ill. App. 681.

A secretary having made similar contracts, it was inferred that he acted with the knowledge of the directors. *Chicago Bldg. Society v. Crowell*, 65 Ill. 453.

Officers cannot apply property of the corporation in their possession to the payment of debts due them. *Emporium R. E. & M. Co. v. Emrie*, 54 Ill. 345.

Ratification of acts of, what so regarded. *Reichwald v. Hotel Co.*, 106 Ill. 439.

Foreign insurance companies doing business in this State will be bound by the acts of their president and general agent. *Ins. Co. v. White*, 106 Ill. 67.

Corporation having a right of action against its officers or others, for wrongfully dealing with corporate property or wrongful exercise of corporate franchises, and actually or in effect refusing to prosecute a suit; action may be maintained by a stockholder individually or for the benefit of all similarly situated, always — in such case — making the corporation a party. *Chicago v. Cameron*, 120 Ill. 451; s. c., 11 N. E. Rep. 899.

Stockholders' remedy against the wrongful acts of corporate officers is not confined to the prevention of an unlawful act; where an act would be enjoined equity may declare the same act, if consummated, void. *Id.*

Where an action may be maintained by stockholders to preserve the corporate property and interests and there is a reasonable certainty that a demand on the corporation to sue will be of no avail, demand on the managing body will not be required. *Id.*

President and treasurer have no implied power to confess judgment or to empower another to do so. They must receive the express authority of the directors. *Elec. L. & P. Co. v. Ingalls*, 23 Ill. App. 45; *Adams v. C. W. Print Co.*, 27 id. 313.

While acting as president of a corporation, a husband cannot be deemed to be the agent of his wife, other than as he is agent for other stockholders. *Booth v. Smith*, 117 Ill. 371; s. c., 7 N. E. Rep. 610.

By-laws of a corporation for profit making it the president's duty generally to supervise its business and placing all its property under his control, he having for years acted as its attorney; this evidences his authority to retain proper attorneys. *Wetherbee v. Fitch*, 117 Ill. 69; s. c., 7 N. E. Rep. 513.

A rule of directors that no debt be incurred or contract entered into without consent of a majority is not violated by the president's employment of an attorney, a majority of the directors consenting. *R. R. S. Co. v. Bowman*, 17 Ill. App. 354.

Notice to the president of a corporation in hands of a receiver is not notice to the corporation. *Ins. Co. v. Pennell*, 19 Ill. App. 212.

Officer of a corporation is personally liable, in damages, to one who is injured by his illegal act, or by such act performed by a servant under his control and by his direction. That the corporation is also liable does not exonerate him. *Peck v. Cooper*, 112 Ill. 194.

Omnibus company incorporated. President ordering the drivers to exclude colored persons and one such ejected and injured. President is individually liable. *Id.*

Retaining a servant in the employ after knowledge brought home to the office or agent of a corporation of his misconduct, resulting in injury to another, or failing to discharge him for negligence, is evidence as to the animus of those controlling the company. *Id.*

In action against a corporate officer, for injury done by a servant, under his direction, the only injury, as to his interest, is whether he had control of the management of the company. How much stock he holds is immaterial. *Id.*

Notice to an agent of a corporation on whom a duty is imposed, of matters falling within the line of his duty, is notice to the corporation. *Sang, C. M. Co. v. Wiggerhaus*, 122 Ill. 281; s. c., 13 N. E. Rep. 648.

An agent's declarations are evidence against a company only when they are res gestae of some act done within the scope of his authority. *Citr. G. & H. Co. v. McNally*, 15 Ill. App. 181.

Corporation as garnishee, before a justice of the peace, may appear by agent. *Cornell v. Payne*, 115 Ill. 65; s. c., 3 N. E. Rep. 718.

The remedy against one for falsely assuming to act as agent of a corporation is an action on the case and not on the contract made by him. *Hancock v. Yunker*, 83 Ill. 209.

When an officer of a corporation seeks to recover for salary, he must show his right of recovery by proving that he was an officer de jure. It is not enough that he show that he was such officer de facto. *Waterman v. R. R. Co.*, 34 Ill. App. 270.

Directors may invest president with authority to bind corporation by deed or lease, either by express resolution or by an acquiescence in his assumption of authority, in that respect, which would justify persons who deal with him in the inference that he had such authority in fact. So, if the act is one incident to the execution of the trust imposed on his office he may perform it without express authority. *Koch v. Buil. Assn.*, 35 Ill. App. 468.

In the absence of statutory prohibition it is not unlawful for officers of a corporation to contract debts in excess of its capital stock. *Woolverton v. Taylor*, 132 Ill. 206; s. c., 23 N. E. Rep. 1007.

Acts done by president, pertaining to business of corporation, will be presumed to be lawfully done, unless shown to be unauthorized. *Glover v. Wells*, 40 Ill. App. 354; *Glover v. Lee*, 140 Ill. 102; s. c., 29 N. E. Rep. 680; *Hotel Co. v. I. M. E. Co.*, 140 Ill. 248; s. c., 29 N. E. Rep. 1044. Only, however, in absence of statute or by-law touching subject-matter of the particular act done. *Koch v. Buil. Assn.*, supra.

President has not, merely as such, authority to execute deeds, mortgages or leases. He is merely the presiding officer at meetings of directors. *Id.* So, he may not transfer all the property of corporation, in payment of its principal creditor, without authority of directors. *Ragland v. McFall*, 137 Ill. 91; s. c., 27 N. E. Rep. 75. But stockholders may, by remaining silent, be estopped from repudiating such transfer. *Id.*

Corporation will not be heard to deny authority of its managing officer when it has deceived the public as to his authority. *McDonald v. Chisholm*, 131 Ill. 282; s. c., 23 N. E. Rep. 596.

Delegation of power to officers, construction of. *Bank v. Burch*, 40 Ill. App. 512; see, also, *Matson v. Alley*, 41 *id.* 73.

If corporation adopts resolution authorizing president and secretary to execute a deed or mortgage, presumption is that secretary records, or otherwise preserves, such resolution. *Bank v. Schott*, 135 Ill. 667.

Sale of property by president, though invalid, may be ratified by directors. *Beach v. Miller*, 130 Ill. 174; s. c., 22 N. E. Rep. 464.

Declarations of president, though within scope of his authority, not admissible against director or stockholder not present when made. *Bank v. Schott*, supra. When such declarations are binding. *R. R. Co. v. Ashling*, 34 Ill. App. 109.

Corporation made liable for false representation of officers. *Schubart v. Gas Co.*, 41 Ill. App. 188.

President cannot bind corporation by giving its note to pay his own debt. *Kelly v. Post*, 37 Ill. App. 397. Nor by giving its check. *Malt, etc., Co. v. Stern*, 37 Ill. App. 588.

A corporation being an artificial body can act only through agents. *Schultz v. Plankinton Bk.*, 40 Ill. App. 470; *Ins. Co. v. Kennedy*, 57 *id.* 136.

Ergo, affidavit setting forth a contract entered into with a corporation must set forth the agent with whom it was made and the special facts attending the making thereof. *Id.*

A corporation can be punished for contempt only through its officers, or those acting in aid of it. *Sercomb v. Catlin*, 128 Ill. 564; s. c., 21 N. E. Rep. 606.

The acts or non-acts of its servants, within the scope of their duty, are the corporation's acts or omissions. *R. R. Co. v. Hines*, 132 Ill. 168; s. c., 23 N. E. Rep. 1021.

Corporation not liable for libel written by an agent, when. *Ins. Co. v. Paul*, 37 Ill. App. 442.

The fact that a note is signed by the makers with the addition of "Pres." and "Sec." does

not limit their liability or make their signatures those of agents of a disclosed principal; there being nothing to indicate an indebtedness or promise of any corporation. *Williams v. Miami P. Co.*, 36 Ill. App. 114.

Foreign insurance company doing business in this State will be bound by acts of its president and general agent. *Ins. Co. v. White*, 106 Ill. 97.

The right of one stockholder that all agents of the corporation shall act wholly in the interest of the corporation is as great as that of all the stockholders. *Rigdon v. Walcott*, 43 Ill. App. 352.

Power of president to execute judgment notes. *Buggy Co. v. Litchfield, etc., Co.*, 55 Ill. App. 98.

Notice to director or president is notice to the corporation. *Bartlett v. Bank*, 57 Ill. App. 425.

Duty of a corporation in employing agents is merely to take ordinary care, and appoint for work such agents as are competent and likely to do it properly. *Mining Co. v. Dietenthaler*, 48 Ill. App. 616.

Promissory notes may be executed by president and secretary, when done in good faith, to secure lawful indebtedness of corporation. *Matson v. Alley*, 141 Ill. 284; s. c., 31 N. E. Rep. 419.

Powers conferred by stockholders on president and secretary cannot be exercised by one of them only, and if one of them is disqualified neither of them can act. *Cab Co. v. Yerkes*, 141 Ill. 320; s. c., 30 N. E. Rep. 697.

Proof of publication of a notice may be made by agent of corporation. *Maass v. Hess*, 149 Ill. 576; s. c., 29 N. E. Rep. 887.

Corporation must necessarily act by or through agents. Whom to be regarded as such, and when corporation is chargeable with negligence. *Pressed Brick Co. v. Solkowiak*, 148 Ill. 553; s. c., 36 N. E. Rep. 572; *L. S. & M. S. Ry. Co. v. B. & O. R. R. Co.*, 149 Ill. 272; s. c., 37 N. E. Rep. 91.

Admissions of president are admissions of corporation, when. *Id.*

Notice to managing officer or agent of the corporation may usually be regarded as notice to the corporation itself. *Koch v. Roth*, 150 Ill. 212; s. c., 37 N. E. Rep. 317.

Notice given by a corporation, claiming a mechanic's lien, by its attorney, not under the corporate seal. *Lumber Co. v. Fullenwider*, 150 Ill. 629; s. c., 37 N. E. Rep. 899.

Power given officers to borrow money and purchase stock and material should be strictly construed. *Paper Co. v. Robbins*, 151 Ill. 588; s. c., 38 N. E. Rep. 153.

When an officer purchasing securities of the corporation at a discount will not be held to enforce them for their face value. *Higgins v. Lansingh*, 154 Ill. 301; s. c., 40 N. E. Rep. 362.

Note and mortgage by a corporation to its president, to secure a sum advanced to him in payment of stock subscription of another stockholder, are invalid. *Hodson v. Glass Co.*, 156 Ill. 397; s. c., 40 N. E. Rep. 971.

The president of a publishing corporation is its agent, and a proper person to make the certificate of the publication of the delinquent list by such corporation, within meaning of section 186 of the Revenue Act. *Hertig v. People*, 159 Ill. 237; s. c., 42 N. E. Rep. 879.

Fact that president of a corporation received, as a part consideration for sale of its property, a note, the proceeds of which, when paid, he used to pay debt of the corporation upon which he was personally liable, is not such an appropriation of its funds as amounts to a fraud upon other creditors. *Pearsons v. Hatton*, 58 Ill. App. 272.

Vice-president of corporation may act as its agent, and if he is by it recognized and treated or held out to the world, his acts, within the scope of the authority given to him, are as binding as those of any other agent. *Union Assn. v. Geer*, 64 Ill. App. 648.

Information given to president of a bank for purpose of transmission made through his bank, will be regarded as information transmitted to bank, whether president in fact does so or not. *Bartlett v. Bank*, 57 Ill. App. 425.

Persons deal with agents of a corporation at their peril, when. *Bricklayers v. Fitzgerald*, 59 Ill. App. 362.

Rule in regard to rights of strangers to corporations dealing in good faith with their officers in the exercise of apparent power conferred upon such officers as agents of the corporation, does not apply to secure the payment of an existing debt due and unpaid. *Ashley v. Illinois*, 60 Ill. App. 189.

Necessity of business required that public dealing with officers of corporation in good faith, on strength of apparent power, should be protected against such claims as merely affect the regularity of calling of meetings of board of directors. *Id.* A corporation can only act by its agents, the acts of whom, within the scope of their apparent authority, are acts of the corporation. *R. R. Co. v. Carter*, 62 Ill. App. 618.

A contract of guarantee made by an executive officer of the corporation, in the absence of express authority of board of directors, does not bind the corporation. *Dobson v. Moore*, 62 Ill. App. 435.

The general solicitor of a corporation is not presumed to have authority to make agreements for it, save in matters belonging to his department. *Ry. Co. v. Chicago*, 62 Ill. App. 502.

A notice properly served upon an agent who is a manager of a corporation is notice to the corporation. *Lyon v. Crow*, 63 Ill. App. 329.

Strangers to a corporation dealing in good faith with its officers may rely on their acts as legally authorized. *Ashley Wire Co. v. Illinois Steel Co.*, 45 N. E. Rep. 410.

Directors cannot vote a large bonus in addition to a salary to one of their number as president, when he takes part in the proceedings. *McNulta v. Bank*, 45 N. E. Rep. 354.

A guarantee of a third person's note by a manager of a corporation without special authority is invalid. *Dobson v. Moore*, 45 N. E. Rep. 243.

A note of a corporation payable to "B., president," is payable to B. individually. *Hately v. Pike*, 44 N. E. Rep. 411.]

**[By-laws.** Corporation may make such by-laws as are consistent with its charter. *Chandler v. R. R. Co.*, 18 Ill. 190. But not such as will impair contracts. *Ill. etc., Col. v. Cooper*, 25 Ill. 148. They will be binding if adopted by all parties in interest. *People v. Mfg. Co.*, 82 Ill. 457.

A stranger contracting with a corporation is not bound to take notice of its by-laws. *Bath Co. v. Fan Co.*, 50 Ill. App. 681; *Wait v. Smith*, 92 Ill. 385.

The by-laws of every corporation must provide for the calling of meetings of directors. *Stobo v. Prov. Co.*, 51 Ill. App. 440.

By-laws which are in restraint of trade are illegal in the sense that the courts will not enforce them. *Comm. v. Stock Exchange*, 143 Ill. 210; *s. c.*, 32 N. E. Rep. 271.

Power of a corporation to make by-laws. *Durkee v. People*, 53 Ill. App. 396. By-law giving holders of bonds the right to vote for directors is unconstitutional and void. *Id.*

Stockholders are presumed to have knowledge of the by-laws. *Mandel v. L. & C. Co.*, 51 App. 204. Unreasonable provisions in by-laws, result of. *Id.*

A by-law authorizing holders of railroad bonds to vote at stockholders' meetings is void. *Durkee v. Askren*, 155 Ill. 351; *s. c.*, 49 N. E. Rep. 626; 53 Ill. App. 396.

Where it is stipulated by the certificate of stock that the by-laws of an association shall be a part of the contract between the association and the stockholders the latter will be bound by the by-laws and will not be permitted to question the legitimate exercise of the powers conferred thereby upon the association. *Pioneer Co. v. Brockett*, 58 Ill. App. 204.

A person in becoming a member of a corporation, agreeing to be bound by its laws, does not agree to submit to acts violative to the rules by which he and all other corporations are bound. *Nelson v. Board*, 58 Ill. App. 409.

By-law attempting to limit the future action of the stockholders in reference to the increase of stock, and the right to sell or transfer it, is void. *McNulta v. Bank*, 45 N. E. Rep. 351.

By-law authorizing the manager of a corporation to sign notes and checks held not to authorize

a guarantee of a third person's note. *Dobson v. Moore*, 45 N. E. Rep. 243.

By-laws requiring written notice of special meetings shall be held in a specified place. *considered. Ashley Wire Co. v. Illinois Steel Co.*, 45 N. E. Rep. 410.]

§ 7. The shares of stock shall be not less than ten nor more than one hundred dollars each, and shall be deemed personal property, and transferable as such in the manner provided by the by-laws, and subscriptions therefor shall be made payable to the corporation, and shall be payable in such installments and at such time or times as shall be determined by the directors or managers, and an action may be maintained in the name of the corporation to recover any installment which shall remain due and unpaid for the period of twenty days after personal demand therefor, or, in cases where personal demand is not made, within thirty days after a written or printed demand has been deposited in the post-office, properly addressed to the post-office address of the stockholder. The directors may, by by-law, prescribe other penalties for a failure to pay the installments that may from time to time become due, but no penalty working a forfeiture of stock, or of the amounts paid thereon, shall be declared as against any estate before distribution shall have been made, or against any stockholder before demand shall have been made for the amount due thereon, either in person or by a written or printed notice, duly mailed to the proper address of such stockholder at least thirty days prior to the time when such forfeiture is to take effect: Provided, That proceeds of said sale over and above the amount due on said shares shall be paid to the delinquent stockholder.

Transfers of stock. § 8, post. Assessments, etc. § 15, post. Suit against stockholders. § 25, post. Increase or decrease of capital stock. § 50, post. Fraudulent transfers of stock. Ch. 38, § 119.

[Stock issued in violation of law is void. *People v. Mfg. Co.*, 82 Ill. 457. Also, stock issued to person paying nothing. 99 Ill. 222.

Subscription to stock not invalidated, if the party subscribing does not pay, and is a commissioner. *Ryder v. R. R. Co.*, 13 Ill. 516.

Payment of subscriptions to stock made before organization will be enforced, if organization is afterward perfected. *Cross v. Mill Co.*, 17 Ill. 51; *R. R. Co. v. McNeely*, 21 id. 71; *Goodrich v. Reynolds et al.*, 31 id. 491.

Certificate of stock need not be given to enable the company to recover a subscription. *Chandler v. R. R. Co.*, 18 Ill. 190; *R. R. Co. v. Elting*, 17 id. 429; *Sprague v. R. R. Co.*, 19 id. 174; *R. R. Co. v. Zimmer*, 20 id. 651; *Rice v. R. R. Co.*, 21 id. 95; *R. R. Co. v. Earp*, 21 id. 291; *R. R. Co. v. Beers*, 27 id. 185.

Corporation cannot be enjoined from collecting installments on subscriptions because the money may be expended in extending the road, unless stipulated. *Dill v. R. R. Co.*, 21 Ill. 91.

Where unity of interest is destroyed, subscribers to the stock will be released. *Supervisors v. R. R. Co.*, 21 Ill. 338.

Company under no obligation to make a demand. *Goodrich v. Reynolds et al.*, 31 Ill. 491.

## Subscriptions — R. S., ch. xxxii, § 7.

Agreement that a subscriber should not pay his subscription, until all the stock was subscribed, is fraud. *Fey v. Blackstone*, 31 Ill. 539.

Subscriber for stock cannot rescind his contract. *Klein v. R. R. Co.*, 13 Ill. 515.

Subscriptions to stock of railroad, to be paid when the sum of \$5,000 was raised is a conditional contract. *Chase v. R. R. Co.*, 38 Ill. 215.

Certificate of stock not necessary to constitute one a stockholder, under section 9 of the Act of 1857. *Corwith v. Culver*, 69 Ill. 502.

Issue of new certificate of stock to a purchaser; company estopped to deny the stock is valid. *Hall v. R. R. Co.*, 70 Ill. 675.

Suit to recover for a subscription to corporate stock; the existence of the corporation and its capacity — lawfully — to issue stock are conditions precedent to the right to recover. *Hudson v. G. H. Semin.*, 113 Ill. 626.

Subscriptions to corporate bonds on condition that a specified number be subscribed for cannot be enforced before condition performed. *R. R. Co. v. Ennor*, 116 Ill. 59; s. c., 4 N. E. Rep. 762.

Words heading a subscription paper, "assessments not to exceed \$10 a share," cannot qualify an express promise to pay in the body of the contract. *Tel. Co. v. Gray*, 122 Ill. 634; s. c., 14 N. E. Rep. 214.

Agreement that payment of stock shall not be enforced, but made up by dividends — if lawful — cannot be set up to defeat a note given for the stock thereafter, promising unqualifiedly to pay. *McDowell v. Chicago Steel Co.*, 124 Ill. 494; s. c., 16 N. E. Rep. 854.

Secret agreement that a subscriber to stock shall pay out a part of his subscription is void; he is bound for the whole amount. *R. R. Co. v. Ennor*, 116 Ill. 59; s. c., 4 N. E. Rep. 762.

Equity will relieve against a judgment on subscription for bonds and stock which plaintiff cannot deliver to the extent of the value of the bonds, etc., when the company put it out of its power to deliver. *Id.*

Where notes secured by mortgage on real estate are accepted in payment for shares subscribed, this will constitute a good consideration. *Ins. Co. v. Osgood*, 93 Ill. 69.

Verbal agreement to take stock in payment of a note given is inadmissible in evidence in action on the note. *Mosher v. Rogers*, 117 Ill. 449; s. c., 5 N. E. Rep. 583.

Tender of stock is not a condition precedent to a right of action on a note given on a subscription to the capital stock. *Wemple v. R. R. Co.*, 120 Ill. 197; s. c., 11 N. E. Rep. 906.

Directors have no power to release the obligation of a subscriber to pay his subscription. *Bouton v. Dement*, 123 Ill. 145; s. c., 4 N. E. Rep. 62; *Turner v. Ala. M. & M. Co.*, 25 Ill. App. 144.

A promise to issue full-paid stock on the payment of 40 per cent. will not limit the subscriber's liability; the remaining 60 per cent. may be collected after stock issued. *Tel. Co. v. Gray*, 122 Ill. 634; s. c., 14 N. E. Rep. 214.

If stock subscribed for cannot lawfully be issued the subscriber being sued may call for strict proof that the corporation suing is such de jure. *Hudson v. G. H. Semin.*, 113 Ill. 626.

If the amount of capital stock be fixed, there is no liability on a subscription for stock until the whole amount of stock is subscribed for. *Temple v. Lemon*, 112 Ill. 54.

In such case a subscriber cannot be held individually liable for a debt of the corporation, unless he has in some manner estopped himself from alleging the non-subscription. *Id.*

Although the capital stock of a corporation is fixed, by its charter, at a certain sum it has a right to perform acts necessary to perfect its organization and to prepare for entering on its regular business before the whole capital has been subscribed. *People v. Nat. Bk.*, 129 Ill. 627; s. c., 22 N. E. Rep. 288.

A charter provided "before said corporation shall commence business, the stockholders shall pay the several amounts subscribed in full," etc. The words "several amounts subscribed," mean the several amounts subscribed which together make up the full amount of the capital stock. If less than the amount of capital stock required

is paid in the company may not proceed to do business. *Id.* 628.

Each stockholder has a vested right in the contract for subscription of every other stockholder. *Winston v. Dorsett P. & P. Co.*, 129 Ill. 71; s. c., 21 N. E. Rep. 514.

Unpaid subscriptions to stock of a corporation constitute a trust fund which may be subjected to the payment of debts. *Id.*; *Matson v. Alley*, 41 Ill. App. 72.

Creditors are entitled to look at the stock as it appears upon the face of the subscription list. When no creditor is injured, however, stockholders may, as between themselves, agree to release one of them from liability. *Winston v. Dorsett P. & P. Co.*, supra.

Semble, there can never be but one original subscription for the whole capital stock of a corporation. *Tel. Co. v. Bush*, 35 Ill. App. 214.

So, one who subscribes to stock after the whole has been taken cannot be liable to one company as a subscriber. *Id.*

Stock which has been issued to or passed into the ownership of outside parties cannot be subscribed for. It is not then the subject-matter of subscription. *Bates v. Tel. Co.*, 134 Ill. 545; s. c., 25 N. E. Rep. 521.

No device will free a holder of corporate stock from his obligation to pay for such stock its money value equal to the par of the stock. *Alling v. Wenzell*, 35 Ill. App. 247.

As against creditors, no contract made by the company can be allowed to stand, which attempts to change a subscription into a purchase of full-paid stock, or to diminish the amount agreed to be paid by the stockholder. *Bates v. Tel. Co.*, supra.

The attempted release, by the directors of a corporation, of one subscriber to its capital stock from the payment of the price thereof, does not release another subscriber, who has not agreed to such attempted release, from payment for his stock. *Fey v. P. Watch Co.*, 32 Ill. App. 627.

A subscriber to the capital stock of a corporation who claims to be released because of some fraud in inducing him to become a member of the corporation must claim his release at the earliest possible moment. The burden is on him, if much time elapses, to show that he had no notice. *Id.*

A certificate of stock is merely one of the evidences of the existence of the relation of stockholder. *Bates v. Tel. Co.*, 134 Ill. 548; s. c., 25 N. E. Rep. 521.

A corporation and its stockholders are not one and the same. *Nat. Bk. v. Waterman*, 134 Ill. 467; s. c., 29 N. E. Rep. 503.

The damages for the conversion of a certificate of membership in a corporation, of infinitesimal value per se, are the value of the right, interest or property of which the paper evidences the title at the time of conversion. *Olds v. Open Rd.*, 38 Ill. App. 448.

The rights of a shareholder are rights of contract or choses in action. Such right is an equitable right to have the entire property managed in accordance with the charter and, after the dissolution of the company, to have the assets reduced to cash and distributed. *Bank v. Byram*, 131 Ill. 100; s. c., 22 N. E. Rep. 842.

The property of a stockholder consists of his right to a share in the net assets of the corporation, proportionate to the number of shares to which he has title. *Id.*

Subscribers do not become liable to pay until a full assessment has been made. *Tel. Co. v. Barker*, 50 Ill. App. 402. And assessments must not be in violation of contract between corporation and the subscribers. *Id.*

Assessments upon stock of insolvent corporation must be equitable. *Bennett v. Tel. Co.*, 53 Ill. App. 277.

Subscription for stock for mere purpose of enabling corporation to procure other subscriptions, and afterward canceled, will not be permitted, and such subscriber will be held liable to creditors after corporation has become insolvent. *Tel. Co. v. Haight*, 49 Ill. App. 633.

Stockholder estopped to deny the good faith of his subscription. *Bushnell v. Machine Co.*, 138 Ill. 67; s. c., 17 N. E. Rep. 596.

Subscription to stock is in the nature of a continuing offer, and ripens into a binding contract when corporation, after becoming incorporated, accepts the offer. *Hotel Co. v. I. M. E. Co.*, 140 Ill. 248; s. c., 20 N. E. Rep. 1014. Acceptance of subscription by corporation may be inferred from its conduct in retaining in its possession the subscription paper, and expending money on the faith of it. No formal acceptance is necessary. *Id.*

Power of holder of majority of stock, and rights of other stockholders, discussed. *Cab Co. v. Werkes*, 141 Ill. 320; s. c., 30 N. E. Rep. 667.

The purchase of its own stock by a corporation by the exchange of its property even though done in good faith, will not be allowed when it injuriously affects creditor of the company. *Bank v. Burch*, 111 Ill. 519; s. c., 31 N. E. Rep. 420.

There is no law which prohibits ownership of stock of domestic corporation by non-residents, nor requiring that any particular portion of the stock shall be owned by residents. *Rolling Stock Co. v. People*, 147 Ill. 234; s. c., 35 N. E. Rep. 608.

A right of recovery by a foreign corporation of calls made upon stock which has been forfeited for non-payment of such calls, cannot depend on a by-law, merely, but must exist in the act under which the company is incorporated. *Mandel v. L. & C. Co.*, 154 Ill. 177; s. c., 40 N. E. Rep. 462.

Right of a corporation to recover in another jurisdiction amount of calls made upon its stock does not depend upon the principle of comity, but upon the right to enforce a contract. *Id.*

Corporation cannot forfeit stock and afterward collect costs. *Id.* Right to recover costs does not include interest and expenses. *Id.* When cost may be made, although entire stock is not taken. *Id.*

Conditional subscription to capital stock irrevocable, when. *Tel. Co. v. Loewenthal*, 154 Ill. 261; s. c., 40 N. E. Rep. 208. What facts will show cancellation of stock subscription. *Id.*

Court, through receiver, has no more power to make and enforce assessments upon stock than directors would have had if no receiver had been appointed. *Id.*

Excessive issue of stock not a fraud on the company itself. *Higgins v. Lansingh*, 154 Ill. 301; s. c., 40 N. E. Rep. 362.

When holders of preferred stock cannot claim to be exclusive stockholders. *Id.*

Assessment of stock creating an equitable title, may be made by means of scrip certificates. *Id.* Relation of stockholders to corporation. *Schrader v. Heinzelman*, 51 Ill. App. 32; *Tel. Co. v. Barker*, 56 Ill. 402.

Status of stockholder after forfeiture of his stock. *Mandel v. L. & C. Co.*, 51 Ill. App. 204.

Subscription to capital stock cannot be canceled because subscriber, through ignorance of law, acted under mistaken idea that she was purchasing stock of a corporation already organized, instead of participating in the organization of a new corporation. *Williams v. Electric Co.*, 160 Ill. 526; s. c., 43 N. E. Rep. 595.

In absence of agreement as to manner of payment for capital stock, other than mere act of subscription, a money payment may be enforced; but, by special contract, labor, property or other valuable consideration may be taken as such payment. *Farwell v. Tel. Co.*, 161 Ill. 522; s. c., 44 N. E. Rep. 891. But the valuation of such property or labor must be made in good faith. *Id.*

The board of directors of a corporation have no power to release a subscriber to the capital stock without full payment of his subscription. *Stone v. Coal Co.*, 59 Ill. App. 536.

A corporation cancelling a stock certificate, and issuing another to an assignee under a forged assignment, will be required to reissue a certificate to the original owner. *Chicago Edison Co. v. Fay*, 45 N. E. Rep. 534.

Where a corporation canceled a certificate of stock and issued another under a forged assignment, the assignee is not a necessary party to a suit by the owner to compel the issuance of another certificate. *Id.*

§ 8. Every assignment or transfer of stocks on which there remains any portion unpaid shall be recorded in the office of the recorder of deeds of the county within which the principal office is located, and each stockholder shall be liable for the debts of the corporation to the extent of the amount that may be unpaid upon the stock held by him, to be collected in the manner herein provided. No assignor of stocks shall be released from any such indebtedness by reason of any assignment of his stock, but shall remain liable therefor, jointly with the assignee, until the said stock be fully paid. Whenever any action is brought to recover any indebtedness against the corporation, it shall be competent to proceed against any one or more stockholders at the same time, to the extent of the balance unpaid by such stockholders upon the stock owned by them, respectively, whether called in or not, as in cases of garnishment. Every assignee or transferee of stock shall be liable to the company for the amount unpaid thereon, to the extent and in the same manner as if he had been the original subscriber.

See § 7, ante, and cross-references. Suit against stockholders. § 25, post. Sale of stock on execution. Ch. 77, §§ 52 et seq. Executor holding stock, liability of. § 23, post. Fraudulent transfer of stock. Ch. 38, §§ 119 et seq.

[Corporation may purchase its own stock unless prohibited by its charter. *Chetlain v. Ins. Co.*, 86 Ill. 220; *Ward v. Farwell*, 97 Ill. 593; *Bank v. Criddle*, 91 Ill. 457; *Fraser v. Ritchie*, 8 Ill. App. 554; *Clapp v. Peterson*, 104 Ill. 26; *Ins. Co. v. Swigert*, 135 Ill. 162; s. c., 25 N. E. Rep. 680. And may hold, reissue or retire the same. *Id.* But not where it will injure a creditor. *Bk. v. Burch*, 40 Ill. App. 513.

Corporation liable in case for refusing to transfer shares of its capital stock. *Ins. Co. v. Osgood*, 93 Ill. 69; *Ins. Co. v. Mtg. Co.*, 97 Ill. 537.

Assignment or transfer of stock when not entered on the books of the company passes equitable title only. *Otis v. Gardner*, 105 Ill. 436. Assignor can have no relief against equitable transfer of stock. *Id.*

Transfers do not affect character as an original subscriber. *Ramsey v. Ins. Co.*, 55 Ill. 311. A corporation cannot become a stockholder in another corporation unless by power specifically granted by its charter or necessarily implied in it. *People v. Chicago G. T. Co.*, 130 Ill. 284; s. c., 22 N. E. Rep. 798. And on this point the General Incorporation Act is silent. *Id.*

Stockholders are not partners. *Baker v. Backus*, 32 Ill. 82.

Under the Act of 1857, relating to private corporations, stockholders are primarily liable to creditors. *Culver v. Bank*, 64 Ill. 528; *Steel v. Dunne*, 65 Ill. 298.

Amendment of charter, as affecting liability of stockholders. *Dows v. Naper*, 91 Ill. 44.

Depreciation of stock no excuse for not paying subscription. *People v. Barnett*, 91 Ill. 422. Where mismanagement of affairs of corporation will not release stockholder. *Chetlain v. Ins. Co.*, 86 Ill. 220. And the fact that an insurance company has purchased an expensive building and stock of another is no defense to the subscription. *Id.*

Where a charter provides that "each stockholder shall be liable to double the amount of stock," each stockholder will be severally and individually liable. *McCarthy v. Lavasche*, 89 Ill. 270; *Hull v. Burtis*, 90 Ill. 213.

Stockholders in insurance companies liable for the debts of their company, to the full amount



## Unpaid subscriptions, liability — R. S., ch. xxxii, § 8.

of their respective shares. *Butler v. Walker*, 80 Ill. 345; *Kipp v. Bell*, 86 id. 577; *Tibballs v. Libby*, 87 id. 142.

For various points as to subscription to the capital stock of insurance companies and the liability of stockholders, see *Melvin v. Ins. Co.*, 80 Ill. 446.

A special partnership, with agreement that it be treated as a corporation; purchaser acquired only equitable title to the stock in the company to be formed. *Land Co. v. Aldrich*, 86 Ill. 504.

A court of equity will require assignee of stock to pay or indemnify. *Kellogg v. Stockwell*, 65 Ill. 68.

Corporation could not make release of subscription to the injury of its creditors. *Zirkel v. Opera House Co.*, 79 Ill. 334.

Subscriber to stock is solely a debtor to the corporation; he sustains no relation of trust toward its creditors. *Turner v. Ala. M. & M. Co.*, 25 Ill. App. 144.

All subscriptions to capital stock are entitled to the same benefit and subject to the same burdens. *Alling v. Wenzell*, 27 Ill. App. 511.

Unpaid subscriptions are a trust fund for the payment of corporate debts; the corporation is the trustee. *Patterson v. Lynde*, 112 Ill. 205.

Acceptance by a corporation of property at an imaginary value, in payment for one-third of its stock, does not enable the holders thereof to cast the entire burden of debt on subsequent subscribers not cognizant of the transaction. *Alling v. Wenzell*, *supra*.

No right of stockholders to limit their liability to creditors. *Ins. Co. v. Mfg. Co.*, 97 Ill. 537. Changing conditions as to liability by subsequent legislation, see *Weidenger v. Spruance*, 101 Ill. 278.

One stockholder may have contribution from the others by proceedings in equity. *Meisser v. Thompson*, 9 Ill. App. 368. The general assembly has power to fix the mode as to liability of stockholders. *Diversey v. Smith*, 103 Ill. 378.

Charter providing for the individual liability of stockholders, for an amount equal to the amount of stock held by them respectively "whenever default shall be made," etc., the liability is coeval with that of the corporation and stockholders are bound as partners. *Fleischer v. Remtchler*, 17 Ill. App. 404.

Stockholders "held individually responsible for an amount equal to the amount of stock held by them respectively," etc., are liable as partners to creditors. *Schalucky v. Field*, 124 Ill. 619; s. c., 16 N. E. Rep. 904.

In such case, when a debt is created, the stockholders' liability attaches, and they are primarily liable to the amount of stock then held. *Id.*

Stockholder made individually liable for debts occupies the same relation to creditors, as to statutory limitations, as does the corporation. *Id.*

The stockholders' liability, under statute of 1857, for the formation of manufacturing, etc., corporations, is to the corporate creditors as a class and not to the individual creditor; the remedy to enforce the liability is in equity. *Rounds v. M'Comick*, 114 Ill. 252; s. c., 29 N. E. Rep. 684.

Creditor seeking merely to reach indebtedness for stock need only bring in the company and the stockholder indebted. *Turner v. Ala. M. & M. Co.*, 25 Ill. App. 144.

Creditors, in a proper case, have not to await the winding up of an insolvent corporation, but may proceed to subject unpaid subscriptions to stock to payment of their claims; but judgment in a State court and execution returned nulla bona is a pre-requisite. *Patterson v. Lynde*, 112 Ill. 204.

Corporation insolvent, judgment creditor is subrogated to the place of debtor corporation and proceeding to subject unpaid subscriptions to stock to payment of the debt is in the nature of an equitable attachment. *Id.* And if it be a foreign corporation such unpaid subscriptions can be collected wherever the stockholders may reside. *Id.*

Capital stock of a moneyed corporation is a trust fund for its shareholders and creditors. *Bouton v. Dement*, 123 Ill. 145; s. c., 14 N. E. Rep. 62.

Agreement to sell a certain number of corporate shares at a price certain, if taken on or before

a day fixed, in futuro, is a prohibited contract. *Sneider v. Turner*, 27 Ill. App. 220.

Shares of stock are not subject to attachment. *Rhea v. Powell*, 24 Ill. App. 77. But are subject to execution and levy. See ch. 77.

Payment to a stockholder, by a corporation, for advances or loans made by him to it, with interest thereon, by the transfer of notes and accounts is but a preference of one over other creditors and not in fraud of them. *Bouton v. Smith*, 113 Ill. 488.

Payment by an insolvent corporation, to a stockholder of a demand, not a legally subsisting debt enforceable by suit, is fraudulent as to its bona fide creditors. *Id.*

Creditors have priority of payment over stockholders. *St. L., etc., v. Sandoval, etc., Co.*, 116 Ill. 172; s. c., 5 N. E. Rep. 370.

In action, by an assignee of stock, to compel a transfer on the corporate books the death of the original holder of the certificates does not render the assignee incompetent as a witness. *Firemen's Ins. Co. v. Peck*, 27 Ill. App. 91.

Sale of all partnership assets to a corporation, composed of the partners and others, for shares of stock to be issued to the partners in a certain proportion, not fully consummated before the death of one partner; stock issued to deceased is not firm assets, which a firm creditor can have applied to his claim, to the exclusion of individual creditors. *Singer v. Carpenter*, 125 Ill. 119; s. c., 17 N. E. Rep. 761.

Fraud and deceit in the sale of shares of corporation stock by the company's president, to recover, the representations must be proved, also, that the party was the authorized agent of the company, that an ordinarily prudent man would rely on them and that plaintiff did so rely. *Hutch. F. & S. Co. v. Lyford*, 123 Ill. 300; s. c., 13 N. E. Rep. 841.

Release of a stockholder's liability for stock and surrender of his note given therefor, for the worthless obligation of an irresponsible person, to the prejudice of creditors, is not to be tolerated. *Bouton v. Dement*, 123 Ill. 145; s. c., 14 N. E. Rep. 62.

One who, being a stockholder in an insolvent corporation, is instrumental in organizing a new company, and induces it to purchase the property of the prior company and to expend much money in developing its resources is estopped to assert an interest as stockholder in the old company against the new corporation. *St. L., etc., Co. v. Sandoval, etc., Co.*, 116 Ill. 172; s. c., 5 N. E. Rep. 370.

Stockholder is not liable on subscription to stock, until the whole amount of stock is subscribed, if the amount of capital stock is fixed. *Temple v. Lemon*, 112 Ill. 54.

A gift to a wife, of bank stock, fraudulent as to creditors. The stock held by an innocent purchaser without notice; it cannot be decreed to be surrendered; a personal judgment against the wife, with interest from decree, is proper. *Eads v. Mason*, 16 Ill. App. 545.

Stock pledged to secure a loan; pledgee acquires title thereto only by sale, for non-payment, conducted as by law required in the case of personally pledged. *Travers v. Leopold*, 124 Ill. 432; s. c., 16 N. E. Rep. 902.

Stockholders' delay of eleven and one-half years in bringing suit to cancel bonds wrongfully delivered for other than corporate purposes and to set aside a trust deed securing them will not bar relief where no attempt has been made to enforce payment. *Chicago v. Cameron*, 120 Ill. 451; s. c., 11 N. E. Rep. 899.

Action for damages for causing the death of plaintiff's intestate; a stockholder of the defendant corporation is not a competent witness as to events occurring prior to the death. *Consol. I. M. Co. v. Klefer*, 26 Ill. App. 466.

Action by assignee of stock based on a refusal to transfer the shares on the corporate books. Plaintiff is a competent witness for himself, although his assignor be dead. *Ins. Co. v. Peck*, 126 Ill. 494; s. c., 18 N. E. Rep. 752.

Parol evidence is admissible to show that a transfer of stock, absolute in form, was but a

pledge. *Travers v. Leopold*, 124 Ill. 432; s. c., 16 N. E. Rep. 902.

A subscription to stock made with nothing done under it is revocable, with the consent of both parties before the corporation commences to do business and before any interest of third persons to be affected by such revocation attaches. *Ailing v. Wenzell*, 35 Ill. App. 247.

In such case, persons surrendering their stock are not assignors to those persons who, afterward, buy the stock from the corporation, and, therefore, not jointly liable with such purchasers. *Id.*

Assignment. A stockholder, to secure a creditor, assigned his certificate thereof by a separate writing, not indorsing the certificate or transferring it on the corporate books, but retaining its possession. A creditor's bill having been filed, the receiver thereunder seized the certificate. The assignment passed no title as against the creditors. *Atkinson v. Foster*, 134 Ill. 475; s. c., 25 N. E. Rep. 528.

A pledgee is entitled to collect a cash dividend on stock and to hold it as he does the stock itself. *Fairbanks v. Merch. Nat. Bk.*, 132 Ill. 129; s. c., 22 N. E. Rep. 524; s. c., 30 Ill. App. 36.

In such case, if he omits to obtain a transfer upon the books of the corporation, the corporation is justified in paying the dividends to pledgor; the latter is, however, a trustee of the pledgee therefor and must account to him. *Id.*

The same rule applies to the issue of new stock at less than its value, when such stock is issued as a privilege to then existing stockholders. *Id.*

A pledge of corporate stock to secure the payment of money will not entitle pledgee to receive any dividends on such stock prior to the pledge. *Id.*

To create the joint liability imposed by this statute the person sought to be charged jointly with the stockholder must have been the assignor of the stock. A return of stock to the corporation and its repurchase as paid-up stock does not create a joint liability of the corporation and stockholder who surrenders his stock. *Ailing v. Wenzell*, *supra*.

Rule that assignments cannot be made until entire stock has been subscribed, not practicable, when. *Mandel v. L. & C. Co.*, 51 Ill. App. 204.]

§ 9. The general assembly shall, at all times, have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding on any and all corporations formed under the provisions of this act: And, provided, further, That this act shall not be held to revive or extend any private charter or law heretofore granted or passed concerning any corporation.

See Const., art. II, § 14.

[Charter of a private corporation is a contract with which the legislature cannot interfere. *Bruffett v. R. R. Co.*, 25 Ill. 353; *Neustadt v. R. R. Co.*, 31 id. 454. The charter can only be judicially forfeited for non-user. *Id.*

Private corporations are subject to legislative control. *Ward v. Farwell*, 97 Ill. 593.

An acceptance of an amendment to the charter, under any general law, makes it subject to the power of the legislature. *Gulliver v. Roelle*, 100 Ill. 141.

A corporation is subject to the laws of the State, and acts of incorporation are subordinate to general police regulation. *R. R. Co. v. McClelland*, 25 Ill. 140; *Conc. C. Assn. v. R. R. Co.*, 121 id. 203; s. c., 12 N. E. Rep. 536.

Debts incurred by a corporation cannot be released or transferred by legislative enactment. *Bruffett v. R. R. Co.*, 25 Ill. 353.

A private corporation may lose its franchises by misuser or non-user, and they may be resumed by the government under information in the nature of quo warranto, but not by mere legislative enactment. *Board, etc., v. Bakewell*, 122 Ill. 340; s. c., 10 N. E. Rep. 378.

The general assembly has power to fix the mode as to liability of stockholders. *Diversey v. Smith*, 103 Ill. 378. Changing the conditions as to liability for debts of corporation by subsequent legislation, see *Weidenger v. Spruance*, 101 Ill. 278.

If with the knowledge and consent of the officers of a board of trade, its private statistics, etc., by the manner of their use have become affected with a public interest, then such reports are subject to such legislative and judicial control as will prevent injury to the public use. *Stock Exch. v. Bd. of T.*, 127 Ill. 163; s. c., 19 N. E. Rep. 855.

If a restriction upon the right of certain corporations to contract is held to fall within power reserved in this section, it must, in view of the constitutional provision (§ 1 of art. XI), be construed as reserving the power to prescribe such regulations and provisions as legislature may deem advisable, by general law, applicable to all corporations of the same class. *Coal Co. v. People*, 147 Ill. 66; s. c., 35 N. E. Rep. 62.

The legislature may impose new duties on corporations, same as on individuals, in absence of special exemptions. *R. R. Co. v. Bloomington*, 76 Ill. 447.]

§ 10. All corporations organized under this law, whose powers may have expired by limitation or otherwise, shall continue their corporate capacity during the term of two years, for the purpose, only, of collecting the debts due said corporation, and selling and conveying the property and effects thereof.

Duration not to exceed ninety-nine years. § 2, ante. Dissolution of corporation. § 49e, post. Same. § 155, post.

[Stockholders own the franchise, property and assets of the company remaining after liabilities discharged. *St. L., etc., Co. v. Sandoval, etc., Co.*, 116 Ill. 172; s. c., 5 N. E. Rep. 370.

Above section and section 25, and other provisions of statutes, show the settled policy of this State, so far as relates to domestic corporations, to be that upon dissolution they shall be deemed in existence for purpose of settling up their affairs. *Life Assn. v. Fassett*, 102 Ill. 315. Same doctrine applies to foreign corporations having property and doing business within this State. *Id.* Former statutes construed to have same effect with this. *Ramsey v. Ins. Co.*, 55 Ill. 311.]

§ 11. Such corporations shall use their respective names for the purpose aforesaid, and shall be capable of prosecuting and defending all suits in law or equity.

See § 5, subd. 1, ante. Remedies not affected by dissolution. § 12, post.

§ 12. The dissolution, for any cause whatever, of any corporation created as aforesaid, shall not take away or impair any remedy given against such corporation, its stockholders, or officers, for any liabilities incurred previous to its dissolution.

See § 5, subd. 1, post, and cross-references. Dissolution of corporation. §§ 49a-49e, post. Same. §§ 149-156, post.

[After dissolution of a corporation a writ of error should be brought by the receiver. *Life Assn. v. Fassett*, 102 Ill. 315.

After dissolution and receiver appointed, corporation has existence to settle affairs. *St. L. Co. v.*

## Principal office; assessments; excessive indebtedness — R. S., ch. xxxii, §§ 13-16.

S. C. & M. Co., 111 Ill. 39. And plea of nul tiel corporation not applicable in its suit. *Id.*

After corporation has ceased to exist, equity will take jurisdiction to wind up its affairs. *Patterson v. Lynde*, 112 Ill. 205.]

§ 13. It shall be the duty of the directors or trustees of every stock corporation to cause to be kept at its principal office or place of business in this State, correct books of accounts of all its business, and every stockholder in such corporation shall have the right at all reasonable times, by himself or by his attorney, to examine the records and books of accounts of the corporation.

Records of corporation as evidence. Ch. 51, § 15.

[Stockholders are entitled at all reasonable times and in a reasonable manner to inspect the books of the corporation, but if by it denied, such denial not ground for appointment of a receiver. *Natatorium Co. v. Heissler*, 50 Ill. App. 406.]

Primary object of this section (13) is to protect the rights of stockholders, and may also be to aid State in exercising its visitatorial power, or to enable creditors of stockholders to ascertain the number of shares standing in the names of each, so as to levy execution or attachment thereon. *Rolling Stock Co. v. People*, 147 Ill. 234; s. c., 35 N. E. Rep. 608.

Stockholder may, by mandamus, compel corporation to comply with law which guarantees to him right to examine its records and books of accounts, and that, too, not in another jurisdiction, but at the principal office of such corporation in this State. *Crown Co. v. Thomas*, 60 Ill. App. 234.

Corporation may be compelled by mandamus to keep its records and books of accounts in its principal office or place of business in this State. Keeping them in another jurisdiction is a violation of law. *Id.*

Books and records of an incorporated company do not belong to any of its officers and agents as such; they are the property of the company of which each director is a trustee, and bound to serve equally the interests of all the cestui que trust. *Stone v. Kellogg*, 62 Ill. App. 444; s. c., 46 N. E. Rep. 222.

Directors and stockholders have the right to know what the records show. *Id.*

Majority of board of directors cannot exclude minority from knowledge of what company is doing, nor deny access to its files and records. *Id.*]

§ 14. A failure to elect directors, trustees, or officers in lieu of trustees on the day named and designated in the by-laws, or on the day for which notice was given for election, shall not have the effect of dissolving the corporation; but such election may be held at any time after proper notice.

Dissolution. § 49a, post. Same. § 149, post. See § 3, ante, and cross-references.

[See *People v. Wren*, 5 Ill. 269; *President, etc., v. Thompson*, 20 Ill. 197.]

§ 15. All assessments or installments of the stock of any stock corporation shall be levied by the directors in accordance with the provisions of the by-laws, but any assessment or installment required to be paid shall be levied pro rata upon all the shares of such stock.

See § 7, ante, and cross-references.

[Liability for calls. *Banet v. R. R. Co.*, 13 Ill. 504; *Stone v. Oil Co.*, 41 id. 86.]

A party who pays the installment required by the charter, before the books are closed; held to pay the residue. *Klein v. R. R. Co.*, 13 Ill. 515.

Payments of subscriptions to stock made before the organization of a company will be enforced, if the organization is afterward perfected. *Cross v. Mill Co.*, 17 Ill. 54; *R. R. Co. v. McNeely*, 21 id. 71; *Goodrich v. Reynolds et al.*, 31 id. 491.

Where defendant was to pay in certain proportions, a call for the whole is not justified. *Spangler v. Ry. Co.*, 21 Ill. 277.

Subscriptions not payable until called for in accordance with contract. *Ins. Co. v. Moore*, 84 Ill. 575.

Subscriptions paid in installments, within twenty days after call; subscriber entitled to twenty days' notice. *Cole v. Opera House Co.*, 79 Ill. 96.

Subscription to stock providing for payment in installments, as ordered by directors; cause of action accrues only when an installment is assessed and ordered paid. *Tel. Co. v. Gray*, 122 Ill. 634; s. c., 14 N. E. Rep. 214.

Subscription to stock payable in installments as ordered by directors. The directors failed to make an order as to balances due, but later, in suit by creditors, equity ordered an assessment on the subscription; limitations ran only from the order of court. *Id.*

On bill by a stockholder to wind up a corporation and to assess unpaid stock to pay debts it is proper for the court, by decree, to reserve the power to assess. *Winston v. Dorsett P. & P. Co.*, 27 Ill. App. 546.

The payment of an assessment levied on corporate stock, with knowledge of facts which would warrant a rescission of the subscription made therefor, is a waiver of objections to the subscription and of the right to repudiate it. *Tel. Co. v. Bush*, 35 Ill. App. 214.

A subscription to corporate stock bears interest after it becomes due. As the installments are called for, such installments bear interest. *Fey v. P. Watch Co.*, 32 Ill. App. 631.

Is a contract of subscription to capital stock of a corporation the same as that of the maker of a promissory note payable on demand? *Bennett v. Tel. Co.*, 53 Ill. App. 276.

Assessment upon capital stock of an insolvent corporation may be made by a court, but such assessment will have no greater effect than as if made by directors. *Id.* 277; *Tel. Co. v. Barker*, 56 Ill. App. 402.

Assessment upon stock of an insolvent corporation must be equitable. *Bennett v. Tel. Co.*, supra.

The liability of stockholder for calls, though dependent upon the phraseology of the statute, is contractual, and will ordinarily be enforced by the courts of another jurisdiction, unless a wrong would be done to the citizens of such jurisdiction, or the policies of its laws will be contravened or impaired. *Mandel v. Land Co.*, 154 Ill. 177; s. c., 40 N. E. Rep. 462.]

§ 16. If the indebtedness of any stock corporation shall exceed the amount of its capital stock, the directors and officers of such corporation assenting thereto, shall be personally and individually liable for such excess to the creditors of such corporation.

Dividends of insolvent company, liability. § 19, post. Liability of stockholder. §§ 8, ante, 25, post. False reports, etc., liability. § 21, post.

[Officers of corporation who assent to an indebtedness in excess of capital stock are made personally liable. *Low v. Buchanan*, 94 Ill. 76.]

This section does not prohibit the contracting of debts in excess of capital stock, nor does it, in terms, inflict a penalty for so doing. Only a consequence is declared. *Woolvorton v. Taylor*, 132 Ill. 206; s. c., 23 N. E. Rep. 1007.

The effect of the statute is that the officers assenting to increasing corporate indebtedness be-

yond the limit of capital are to be held guilty of a violation of their trust. Id.

Hence, so far as the excess of indebtedness over stock is necessary, such officers are liable to make good the debts of the creditors. Id.

This liability constitutes a fund for the benefit of all creditors entitled to share it, so far as may be necessary to pay their debts. Id. The remedy is in chancery. Id.

The liability is an absolute liability, but is to be enforced only to the extent that the corporation fails to pay. It is in the nature of security to all the creditors. Id.

This section does not mean that officers shall become liable only for one act of assent to excessive indebtedness during the corporate life. The excess may be increased, from time to time, by different officers, running over a period of years. Id. Hence, officers liable to all creditors regardless of when they became such. Id. The act of consent to an excess of indebtedness does not give separate cause of action to one creditor, but a collective one for benefit of all. Id.

The statute of limitations begins to run, as to such liability, when the excess of indebtedness is created with the assent of the persons to be charged, without regard to its maturity against the corporation. Id.

Officers of a stock corporation having created an indebtedness in excess of the capital stock issued notes. More than five years after such issue but within five years after maturity of the notes a bill was filed to enforce the liability of the corporate officers. The five years limitation did not begin to run until the maturity of the notes. Id.

A corporation incurring an indebtedness in excess of its capital stock, the officers assenting thereto are not liable to be proceeded against for the excess by creditors until the debts have been reduced to judgment against the corporation. Id.

The statutory liability of such officers is stricti juris, not attaching so long as the debt can be paid from the company. Id.

To enforce the liability of officers for debts it does not follow that creditor cannot maintain a bill until all debts against the corporation are due. On a proper bill by one creditor, a court of equity can bring before it the corporation, its officers who assented to excessive indebtedness, and all its creditors and, ascertaining all the facts, may determine the sum to be recovered from the officers and apportion it among the creditors. Id.

Proceedings under this section not a suit for recovery of a penalty, within meaning of statute of limitations. Id.; s. c., 30 Ill. App. 44.

Liability under this section is not predicated upon a mere neglect in not keeping advised of the corporate action but upon an assent to the exclusive indebtedness. *Lewis v. Montgomery*, 48 Ill. App. 282.

Above section discussed and construed. *Lewis v. Montgomery*, 145 Ill. 30; 33 N. E. Rep. 880.

Regardless of statute, assignee in bankruptcy of insolvent corporation may compel stockholders to pay their unpaid subscriptions to stock. *Sanger v. Upton*, 91 U. S. 56; *Webster v. Upton*, Id. 65; *Sawyer v. Hoag*, 84 Id. (17 Wall.) 610.

Personal liability of officers for excessive indebtedness, who may complain. *Woolverton v. Taylor*, 157 Ill. 485; s. c., 42 N. E. Rep. 49. Assignee of notes for collection only cannot. Id.

Liability of officers for excessive indebtedness arising on accommodation paper. Id.]

§ 17. The president, secretary or treasurer of any stock corporation shall, annually, within twenty days from the first day of December, make a statement in writing, setting forth a description of all real estate to which title was acquired in securing any debt or liability due such corporation, together with the time of acquiring title thereto; which statement shall be verified by the oath or affirmation of such president, secretary or treasurer, and be recorded in the office of the recorder of

the county, and filed in the office of the secretary of State.

See § 5, subd. 3, ante. False reports. Liability. § 21, post.

§ 18. If any person or persons, being, or pretending to be, an officer or agent or board of directors of any stock corporation or pretended stock corporation, shall assume to exercise corporate powers, or use the name of any such corporation or pretended corporation, without complying with the provisions of this act, before all stock named in the articles of incorporation shall be subscribed in good faith, then they shall be jointly and severally liable for all debts and liabilities made by them and contracted in the name of such corporation or pretended corporation.

See § 1, ante.

[The legality of a corporation cannot be attacked collaterally. See § 2, note.

Contract made with a de facto corporation, whether creating a corporate or individual liability. *Hancock v. Yunker*, 83 Ill. 208.

Assumption of corporate powers, an information generally denying the individual's right is sufficient to put them to their justification. *People v. Otta. Hydr. Co.*, 115 Ill. 285; s. c., 3 N. E. Rep. 413.

When creditor is at liberty to proceed under above section. *Loverin v. McLaughlin*, 46 Ill. App. 373.

One who deals with a corporation as such, buying from it and executing notes to it, cannot question its corporate existence. *Miami P. Co. v. Hotchkiss*, 17 Ill. App. 624.

A plea of nul tiel corporation interposed in an action by a corporation upon a written agreement to pay money does not impose the burden of proving it to be in all respects a legal corporation. *Hudson v. G. H. Semin.*, 113 Ill. 625.

In an action by a corporation on a written promise to pay money, the execution of the obligation affords sufficient prima facie evidence of corporate existence, de facto. Id.

Mere assumption of or advertising in a name appropriate for a corporation is not an offense, unless it be done in solicitation of business. *Edgerton v. Preston*, 15 Ill. App. 23.

When an existing corporation abuses any of its franchises or usurps franchises which do not belong to it, an information in the nature of quo warranto should be against the corporation itself. *People v. Spring Valley*, 129 Ill. 175; s. c., 21 N. E. Rep. 843.

Aliter, when a body of men or a number of individuals, unlawfully assume to be a corporation. In such case the information should be against them as individuals, not in a corporate name. Id.

An appeal in a controversy involving a franchise must be taken to the supreme court. *Busnell v. Cons. Ice M. Co.*, 37 Ill. App. 133.

A franchise is as much involved when the relief sought is to enjoin a company from acting as a corporation, as when it is sought to enjoin the corporation of a company by a given name. Id.

Directors who assume to exercise the corporate powers and use corporate name without filing final certificate with county recorder are liable under this section. *B. & T. Co. v. Gade*, 53 Ill. App. 181.

When certificate of complete organization is issued by secretary of State, a corporation de facto comes into existence. Id.

Officers are, under above statute, liable for debts of corporation contracted by them in name of corporation before the certificate of its complete organization has been recorded in the county where the principal office is located. *Loverin v. McLaughlin*, 161 Ill. 417; s. c., 44 N. E. Rep. 99.

Members or stockholders of a corporation illegally formed are liable, as partners, for its acts or contracts, and directors and agents acting in its name render themselves liable, independently of the statute. *Id.*

A creditor is not estopped by dealing with a corporation as being such, de facto, from asserting the liability of the officers or directors for debts contracted in the name of the corporation without the statute having been complied with. *Id.*

Filing of claim against corporation with its assignee does not estop a creditor from afterward asserting the personal liability of officers for non-compliance with the statutes. *Id.*

An action at law, and not in equity, is the proper remedy for enforcing the personal liability of officers or directors of the corporation under statute. *Id.*

Where an association assumes a name which imports that it is a corporation, and contracts with persons as if it were a corporation, it cannot be heard to deny such representations. *Fitzpatrick v. Rutter*, 58 Ill. App. 532; *Fields v. Brotherhood*, 60 *Id.* 258.

Action to enforce personal liability of directors under above section should be at law, and not in equity. *Loverin v. McLaughlin*, 44 N. E. Rep. 99.

By dealing with directors as a corporation, a creditor is not estopped to enforce their personal liability for corporate debts in case they do business without complying with the provisions of the statute. *Id.*

Under above section directors are personally liable if they transact business before all the subscribed stock has been paid in good faith. *Id.*

A creditor held not estopped to enforce personal liability of directors who failed to organize a corporation by filing a claim with an assignee for the creditors of the pretended corporation. *Id.*

§ 19. If the directors, or other officers or agents of any stock corporation, shall declare and pay any dividend when such corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers or agents assenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, and for all that shall thereafter be contracted while they shall, respectively, continue in office.

When directors and officers liable for debt. § 16, ante. Liability of stockholder. §§ 8, ante, 25, post. False reports, etc., liability. § 21, post.

[Where dividend is declared, it belongs to person holding the stock at the time of the declaration whether the holder be a life tenant or a remainderman, and without regard to the source of the earnings divided. *Waterman v. Alden*, 42 Ill. App. 294. Dividends and profits defined. *Id.*

A corporation is a trustee of its assets primarily for its creditors. *Hill v. Grnell*, 42 Ill. App. 411. Who are to be regarded as creditors of insolvent corporation. *Id.*

When holders of preferred stock need not account for dividends. *Higgins v. Lansingh*, 154 Ill. 801; s. c., 40 N. E. Rep. 362.]

§ 20. The by-laws of every corporation shall provide for the calling of meetings of the directors, trustees, or other officers corresponding to trustees; and when all such officers shall be present at any meeting, however called or notified, or shall sign a written consent thereto on the record of

such meeting, the acts of such meeting shall be as valid as if legally called and notified: Provided, That the action of any meeting held beyond the limits of this State, shall be void, unless such meeting was authorized, or its acts ratified by a vote of two-thirds of the directors, trustees, or officers corresponding to trustees, at a regular meeting.

See § 3, ante. Powers to be exercised by directors. § 6, ante.

[Written or a verbal notice of meeting, left at place of business, sufficient. *Williams v. Ins. Co.*, 68 Ill. 387.

The by-laws of every corporation must provide for the calling of meetings of directors. *Stobo v. Prov. Co.*, 54 Ill. App. 440.

When all directors are present at any meeting, however called or notified, the acts of such meeting will be as valid as if legally called and all directors notified. *Id.* The question of ulterior motive in the calling of a directors' meeting is wholly immaterial. *Id.*

Meeting of part of board of directors not a lawful meeting. *Buggy Co. v. Litchfield, etc., Co.*, 55 Ill. App. 98.

A by-law of a corporation which requires that regular meetings of board of directors shall be held at the home office of the corporation does not apply to special meetings. *Ashley v. Illinois Steel Co.*, 60 Ill. App. 189; s. c., 45 N. E. Rep. 410.

In the absence of a prohibition the ordinary business of a corporation may be done at any place. *Id.*

Fact that signature of secretary of corporation to a notice of the meeting of the board of directors was made with a rubber stamp, held by the hand of the president, does not invalidate the acts done at the meeting, and where the secretary attends the meeting and treats the notice as valid. *Id.*

When call for special meeting of board of directors need not specify the business to be transacted. *Id.*

§ 21. If any certified report or statement made, or public notice given by the officers of any corporation, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all damages arising therefrom.

See § 16, ante, and cross-references. Annual statement of real estate. § 17, ante.

§ 22. The stockholders of any stock corporation, owning two-thirds of the stock in such corporation upon which all assessments have been fully paid up, may call a meeting of the stockholders of such corporation, by signing a call therefor with their proper names, stating the number of shares held by each and filing the same with the president or secretary of such corporation, and publishing the same in a newspaper in this State where the principal office of such corporation is kept, and at the seat of government, for three successive weeks prior to the time fixed for holding such meetings, and mailing a copy thereof to each of the directors of said corporation at his usual place of abode. And the secretary of such corporation shall enter such call upon the

records thereof, and the fact of such publication, and mailing such notice, giving the name of such paper, with the dates and places of publication, which shall be prima facie evidence thereof.

See § 3, ante, and cross-references.

[Publication of notice in a newspaper of proposed meeting of stockholders is not equivalent to personal notice, or notice by mail. A meeting can be held after improper notice only when all stockholders are present and consenting, in person or by proxy. *Gas Engine Co. v. Charter*, 47 Ill. App. 36.]

Bondholders cannot, in any way, be given the right to vote at meetings of stockholders. *Durkee v. People*, 53 Ill. App. 390; 155 Ill. 354; s. c., 40 N. E. Rep. 626.

Proof that a notice of a stockholders' meeting was deposited in the post-office, properly directed and postage paid, is prima facie evidence that it was received by the person to whom it was addressed. *Ashley v. Illinois*, 60 Ill. App. 180.]

§ 23. No person holding stock in any corporation as executor, administrator, conservator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly, and the estate and funds in the hands of such executor, administrator, conservator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund, would have been if he had been living and had been competent to act and held the stock in his own name.

Liability of stockholders. § 8, ante, and cross-references.

[If shares of stock are held by one as trustee for another, the legal holder of the shares — not the equitable owner — is primarily liable to the corporation and its creditors. *Winston v. Dorsett P. & P. Co.*, 129 Ill. 70; s. c., 21 N. E. Rep. 514.]

§ 24. Every executor, administrator, conservator, guardian or trustee shall represent the stock in his hands at all meetings of any stock corporation, and may vote accordingly as a stockholder, and every person who shall pledge his stock may, nevertheless, represent the same at all meetings, and may vote accordingly as a stockholder.

See § 3, ante.

§ 25. If any corporation, or its authorized agents, shall do or refrain from doing any act which shall subject it to a forfeiture of its charter or corporate powers, or shall allow any execution or decree of any court of record for a payment of money, after demand made by the officer, to be returned "no property found," or to remain unsatisfied for not less than ten days after such

demand, or shall dissolve or cease doing business, leaving debts unpaid, suits in equity may be brought against all persons who were stockholders at the time, or liable in any way for the debts of the corporation, by joining the corporation in such suit; and each stockholder may be required to pay his pro rata share of such debts or liabilities, to the extent of the unpaid portion of his stock, after exhausting the assets of such corporation, and if any stockholder shall not have property enough to satisfy his portion of such debts or liabilities, then the amount shall be divided equally among all the remaining solvent stockholders; and courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, to appoint a receiver therefor who shall have authority, by the name of the receiver of such corporation (giving the name), to sue in all courts, and do all things necessary to closing up its affairs as commanded by the decree of such court. Said receiver shall be in all cases a resident of the State of Illinois, and shall be required to enter into bonds, payable to the People of the State of Illinois, for the use of the parties interested, in such penalty and with such securities as the court may, in the decree or order appointing the same, require. In all cases of suits for or against such receiver, or the corporation of which he may be receiver, writs may issue in favor of such receiver or corporation, or against him or it, from the county where the cause of action accrued to the sheriff of any county in this State for service. (As amended by act approved May 22, 1877; in force July 1, 1877.)

Liability of stockholders. § 8, ante. Remedies not affected. § 12, ante. Service of summons upon receiver. Ch. 110, § 7a.

[Under the statute the stockholders are, in effect, made partners, and are jointly and severally liable for an amount equal to their stock. *Thompson v. Meisser*, 108 Ill. 359; *Peck v. Coal Co.*, 11 Ill. App. 88.]

Shareholders are conclusively charged with notice of the trust character which attaches to the capital stock. As to it, they cannot occupy the status of innocent purchasers. *Clapp v. Peterson*, 104 Ill. 26.

Effect of provision in the charter as to individual liability. *Buchanan v. Meisser*, 105 Ill. 638. In an action by a creditor against a stockholder to enforce individual liability, stockholder cannot plead as a set-off an indebtedness of the corporation to himself, as such debt is not that of the party suing. Id.

A stockholder who pays the amount of his individual liability thereby acquires an equitable right against his co-stockholders for contribution. Id.

A partnership firm, as a creditor of a corporation, cannot maintain an action at law against one of such firm to enforce his individual liability as a stockholder to the creditors of the corporation, since he cannot be both a plaintiff and defendant. Id.

Remedy of creditors of corporations against stockholders, since the act of 1872, is in equity. *Richardson v. Akin*, 87 Ill. 138.

As to liability of stockholders for the debts of a corporation, see *Harper v. Mfg. Co.*, 100 Ill. 225.

## Enforcement of liability of stockholders — R. S., ch. xxxii, § 25.

When under general law, the party subscribing will incur the liability imposed by the general law. *Tibballs v. Libby*, 87 Ill. 142.

To render stockholder liable under the statute to the extent of his unpaid stock, proceedings must be instituted against him, at the same time that action is begun against the corporation. *Peck v. Coal Co.*, 3 Ill. App. 619; but see *Coalfield Co. v. Peck*, 98 id. 139; *Arenz v. Weir*, 89 id. 25; see *Hull v. Burtis*, 90 id. 213.

Liability to creditors of a bank; when suit may be brought. *Fuller v. Ledden*, 87 Ill. 310; *Wincok v. Turpin*, 96 id. 135; see, also, *McCarthy v. Lavasche*, 89 id. 270; *Dows v. Naper*, 91 id. 44.

Stockholders not liable, until an execution shall be returned unsatisfied. *Cutright v. Stanford*, 81 Ill. 240.

A creditor of a national bank may proceed against the party in whom the legal title to the stock is vested. *Wheelock v. Kost*, 77 Ill. 296; *Bromley v. Goodwin*, 95 Ill. 118.

Subscribers are not liable until the whole capital stock is subscribed. *Temple v. Lemon*, 111 Ill.

Creditors may proceed to subject the unpaid subscriptions to the payment of their claims. *Patterson v. Lynde*, 112 Ill. 205.

Directors cannot make stockholders liable. *Peck v. Coal Co.*, 11 Ill. App. 88.

Defense as to payment of stock. *Washburn v. Roesch*, 13 Ill. App. 268.

Proof of liability of corporation is necessary to hold a stockholder liable. *Chesnut v. Pennell*, 92 Ill. 55.

Stockholders not liable for torts of corporation. *Peck v. Cooper*, 8 Ill. App. 403.

Stockholders cannot occupy the status of innocent purchasers. *Peterson v. I. L. & L. Co.*, 6 Ill. App. 257.

Priority of right of creditors not acquired merely by the institution of suit. *Chicago v. Hall*, 103 Ill. 42.

Capital stock a fund for payment of creditors; equity would enforce the claims of. *Clarkson v. Dispatch*, 6 Ill. App. 284.

Under the General Incorporation Law a stockholder, by garnishment, may be made to pay a balance unpaid on stock whether such stock be called in or not. *Robertson v. Noeninger*, 20 Ill. App. 227.

An amount for which stockholders are liable is a fund from which to pay costs to a receiver; alter as to the complainant's solicitor. *Alling v. Wenzell*, 27 Ill. App. 511.

An agreement, operating between stockholders only, to apportion their stock liabilities is neither contrary to law or public policy. *Winston v. Dorsett P. & P. Co.*, 27 Ill. App. 546.

Equity may take jurisdiction to enforce the liability of stockholders, at the suit of creditors, on behalf of and for all creditors of an insolvent corporation. *Tunesma v. Schuttler*, 114 Ill. 163; s. c., 28 N. E. Rep. 605.

The expression "all stockholders" is regarded, in the absence of legislative construction as to personal liability, as including all who were such when an indebtedness accrued; as well as those who successively stand in their shoes in respect to the same stock. *Root v. Sinnock*, 120 Ill. 357; s. c., 11 N. E. Rep. 339.

Personal liability "to make good all losses;" on bill filed to charge stockholders it is error, by decree, to charge the stockholders with the full amount due at the time of suspension, the law providing for a liability equal to the amount of stock held. *Helmle v. Queenan*, 18 Ill. App. 103.

Creditors of a corporation subject to the statute of 1872, in pursuing the holders of stock unpaid — in whole or in part — must follow the statute (section 25) unless in case of a transfer made (section 8). *Curran v. Bardner*, 27 Ill. App. 582.

To enforce the liability for unpaid stock the bill must be by or for all the creditors against all the stockholders. *Id.*

A single creditor may sue any stockholder of an insolvent corporation to enforce the latter's liability under its charter. *Schalucky v. Field*, 124 Ill. 619; s. c., 16 N. E. Rep. 904.

Suit against stockholder on return of execution nulla bona must be in equity, and liability is de-

ferred until the corporate assets are exhausted. *Robertson v. Noeninger*, 20 Ill. App. 227.

To enforce stockholder's liability for unpaid stock the corporation is a necessary party. If it has ceased to exist, all its stockholders and creditors are necessary parties. *Patterson v. Lynde*, 112 Ill. 205.

Corporation ceased to exist; its assets in excess of debts belonging to stockholders and each stockholder is liable only to pay his pro rata share of amounts needed to pay debts. This duty is upon all stockholders and courts will adjust equities between them. *Id.*

A subscriber for stock who has paid nothing for stock or on assessments, and whose stock is therefore forfeited, is not a stockholder to object to a court's action in distributing assets. *St. L., etc., Co. v. Sandoval, etc., Co.*, 116 Ill. 172; s. c., 5 N. E. Rep. 370.

A decree which charges a single stockholder, and does not find that the assets of the company are exhausted is to be reversed. *Curran v. Bradner*, 27 Ill. App. 582.

Decree, fully adjudicating and settling the personal liability of stockholders of an insolvent corporation, on a bill by creditors for themselves and all other creditors, is binding and conclusive on all creditors, becoming parties, in all collateral proceedings. *Tunesma v. Schuttler*, 114 Ill. 163; s. c., 28 N. E. Rep. 605.

Creditor's bill, not filed on behalf of creditors generally, to set aside a fraudulent conveyance and enforce a shareholder's liability to the corporation; decree for a sum larger than will satisfy the claims of the particular complainants is erroneous. *Bouton v. Dement*, 123 Ill. 145; s. c., 14 N. E. Rep. 62.

Where judgment is obtained to the extent of the stockholder's liability, and the judgment has been satisfied for a sum less than was due, in a future action he is credited with the amount actually paid. *Kunkelman v. Rentchler*, 15 Ill. App. 271.

Judgment against an imperfectly-organized corporation, as between plaintiff and the corporation operates as an estoppel to bar such plaintiff from recovering on the individual liability of the corporate members as partners on the same cause of action. *Cresswell v. Oberly*, 17 Ill. App. 284.

As against the claim of creditors of a corporation it is immaterial what private arrangements subscribers may make with it or with the person who procures their subscription as to the payment of the amount subscribed. *Kern v. Chicago Co-op. B. Assn.*, 40 Ill. App. 358.

If the directors of a corporation attempt to release a portion of the stockholders and cancel their shares, this will not discharge other stockholders from the obligations of their contracts. Such release and cancellation is wholly void. *Fey v. P. Watch Co.*, 32 Ill. App. 630.

The issue of certificates of stock on payment of forty per cent. of their subscription, does not constitute the subscribers holders of full-paid stock of the corporation in such sense that they cannot be called on to pay the remaining sixty per cent. at the suit of creditors. *Bates v. Tel. Co.*, 134 Ill. 548; s. c., 25 N. E. Rep. 521.

Stockholders cannot defeat their liability to corporate creditors by subscribing for stock and then surrendering it to the company, and taking it from the corporation at a fraction of its value. *Alling v. Wenzell*, 35 Ill. App. 247. Any amount paid by them will, in equity, be treated as a payment on the stock, and they will be held liable for their pro rata share to the creditors of an insolvent corporation. *Id.*; s. c., 133 Ill. 275; s. c., 24 N. E. Rep. 551.

In such case the stock taken will be held as issued under the subscription for stock. *Id.*

Where after a part of corporate stock has been subscribed for, to add the organization of the company, one subscriber is induced by the others to subscribe for the balance thereof "as trustees," it being agreed that he should not be liable thereon, but that each should assist him to dispose of the shares; (1) he will be liable to creditors on such stock; (2) he will not be liable to the corporation or other stockholders. *Winston*



*v. Dorsett P. & P. Co.*, 129 Ill. 70; s. c., 21 N. E. Rep. 511.

In the absence of an agreement, a stockholder of a corporation is not under legal obligation to pay the corporate debts from his individual means. *Perry v. Pearson*, 135 Ill. 235; s. c., 25 N. E. Rep. 435.

A promise by a stockholder to pay the debts of a corporation is a promise to pay the debt of another. *Nat. Bk. v. Waterman*, 131 Ill. 467; s. c., 29 N. E. Rep. 563.

The capital stock of a corporation is a fund set apart for the payments of its debts. The company's directors hold it in trust for that purpose. *Alling v. Wenzel*, supra; *Nat. Bk. v. Burch*, 40 Ill. App. 513.

The nominal capital, besides the actual assets, is a fund to which creditors may look for satisfaction. *Thayer v. El Plomo M. Co.*, 40 Ill. App. 346.

Such capital is, in effect, a warranty by each stockholder, on which he is responsible to the extent that his stock has not been fully paid, that the company once had, either the full payment or the binding promise of a stockholder for full payment for every share issued. *Id.*

The directors may not give away or misappropriate the capital stock to the prejudice of persons dealing with the corporation. Any device by which members of a corporation seek to avoid their legal responsibilities is void as to creditors, whether binding or not between themselves or between them and the company. *Alling v. Wenzel*, supra.

The shareholders have no power, by private agreement with the corporation, to make shares non-assessable, so as to exonerate payment for such stock at par, as against creditors. *Id.*

The shareholders of a corporation are conclusively charged with notice of the trust character which attaches to its capital stock. As to it they are, to all intents and purposes, privies to the trust. *N. Bk. v. Burch*, 40 Ill. App. 513.

Ergo; when they have in their hands any of this trust property they hold it, cum onere — subject to all equities which attach to it. *Id.*

To charge a holder of stock with individual liability it is not enough to prove that the stock was paid for in property, and that an over-valuation was placed on the property through a mistake or error of judgment. *Mallin Chem. W. v. Glass Co.*, 34 Ill. App. 413.

In such case, it must be shown that the purchase of the property at the price agreed on was in bad faith and fraudulent. *Id.*

The statute for the incorporation of companies for profit renders stockholders delinquent in payment for stock liable to the full amount unpaid on their stock, when this becomes necessary because of the insolvency of other stockholders who are also delinquent in payment for their stock. *Id.*

The liability of a stockholder is for his unpaid stock. To the extent it is unpaid he is liable for the debts and obligations of the company. When this liability is once discharged, by payment to the corporation, a subsequent assignee or purchaser takes the stock relieved from the statutory burden. *Alling v. Wenzel*, supra.

Where in a former proceeding by creditors to reach the stockholders' liability on unpaid stock, some creditors were not made parties, such creditors will not be barred of their suit to enforce a like liability as to their claims. *Wood v. Wood*, 40 Ill. App. 183.

In such case, however, stockholders in the latter action, who were not parties to the prior suit, should be required to contribute to the fund in the same proportion as those who were parties in that case before the latter are required to make further application. *Id.*

On the hearing of a bill to enforce the liability of stockholders to creditors for money unpaid for stock in an insolvent company, surviving stockholders are competent witnesses for complaint, although their testimony tends to charge the representatives of deceased stockholders, their interests preponderating. In opposition to their testimony. *Thayer v. El Plomo M. Co.*, 40 Ill. App. 347.

Creditor's bill to enforce the liability of stockholders for unpaid subscriptions. The decree dissolved the corporation having long ceased to act and having no property or assets. *Alling v. Wenzel*, 133 Ill. 277; s. c., 24 N. E. Rep. 551.

An action at law by single creditor will lie against any stockholder of an insolvent corporation to enforce individual liability, but right to sue at law does not necessarily exclude jurisdiction of court of equity. *Eames v. Doris*, 102 Ill. 350.

Stockholder does not become liable until corporation has failed to pay its debt. *Schrader v. Heinzelman*, 51 Ill. App. 33.

The amount for which a stockholder of an insolvent corporation is liable is as much a fund for security of creditors as the assets in hands of the assignee. *Id.*

Stockholder may become a creditor of an existing but not a defunct corporation. *Id.*

Liability of stockholders in a corporation of another State. *Tuttle v. Bank*, 48 Ill. App. 481; *Pro. Assn. v. Lloyd*, *id.* 429.

What is a proper action to bring in this State to recover under Kansas statute the personal liability of a stockholder. *Schertz v. Bank*, 47 Ill. App. 124.

Liability of stockholders domiciled in this State, of corporation organized under laws of another State. *Young v. Farwell*, 139 Ill. 326; s. c., 28 N. E. Rep. 845. And jurisdiction of courts of this State to determine such liability. *Id.* Relations between corporation and its members dependent upon law of place where corporation is organized, and liability of stockholders must be determined by laws of such State and by the courts of such State. *Id.*

Creditor may seek satisfaction of his judgment by creditor's bill against single stockholder, but the latter may file cross-bill and bring other stockholders before the court and enforce contribution from all who are delinquent. *Young v. Farwell*, 139 Ill. 326; s. c., 28 N. E. Rep. 845.

Upon bill filed to enforce individual liability of stockholders, court holds that until all debts are paid, creditors are entitled to pursue stockholders for all unpaid subscriptions — solvents making good deficiencies of the insolvents — whatever number of assessments may become necessary in equalizing the burden among those who can be made to pay. *Alling v. Wenzel*, 46 Ill. App. 562.

Capital stock is a trust fund which cannot be given away or misappropriated to the prejudice of corporate creditors; and any device by which members of a corporation seek to avoid liability imposed by law is void as to creditors. *Howe v. Agr. Works*, 46 Ill. App. 85.

Where property is given in exchange for paid-up shares of stock, which property is overvalued in the exchange, upon corporation becoming insolvent, shareholders not liable to creditors unless the overvaluation was fraudulent and made with intent to evade the statute. *Car Seat Co. v. Rankin*, 45 Ill. App. 226.

Above section is intended to afford a remedy in the nature of a creditor's bill, and is assigned to aid creditors in the collection of their debts; and a court of equity, in a suit by creditors, has full power, for cause shown, to close up the business of a corporation or dissolve it. *Hunt v. Rink Co.*, 143 Ill. 118; s. c., 32 N. E. Rep. 525. The attorney-general is not authorized by the law to file a bill or information in equity, under this section, for the purpose of dissolving corporation for a forfeiture of charter. *Id.*

Where special remedy is given to creditors of a corporation against its stockholders, liability cannot be enforced in another State, but only in State in which corporation exists. *Fowler v. Lamson*, 146 Ill. 472; s. c., 34 N. E. Rep. 232. Liability of stockholders for debts of a Kansas corporation. *Id.*

In this State a corporation creditor may, after judgment and execution returned unsatisfied, proceed by bill against one or more delinquent stockholders, without joining all; those sued have the right to bring in all others by cross-bill. *Palmer v. Woods*, 149 Ill. 146; s. c., 35 N. E. Rep. 1122.

Judgments against corporation obtained by fraud by officers will be set aside on the bill of stock-



holders and creditors filed for that purpose. *Paper Co. v. Robbins*, 151 Ill. 588; s. c., 38 N. E. Rep. 153.

Any device by which members of a corporation seek to avoid liability for the full value of their stock, such as an agreement that the stock shall be "fully paid up," is void as to creditors of the corporation. *Coleman v. Howe*, 154 Ill. 458; s. c., 39 N. E. Rep. 725. And when property is given in payment for stock its valuation must be made in good faith. *Id.* A consideration presumptive of bad faith arises from holders' exaggerated estimate of the value of such property, which will be conclusive notice rebutted. *Id.*

Purchaser of stock with notice must pay balance due on subscription. *Id.*

The liability of a stockholder for unpaid stock is several, and when sued, he must make other stockholders parties. *Id.*

Liability of stockholders in foreign corporation must be determined by law of State under which such corporation was created. *Mandel v. L. & C. Co.*, 154 Ill. 177; s. c., 40 N. E. Rep. 462.

Effect of Illinois statute upon foreign stockholders' liability. *Id.*

When stockholder cannot show payment in full on his stock by agreement with the corporation to accept less than par value. *Fehr v. Gasch*, 44 N. E. Rep. 724.

**Insolvency — Dissolution — Receiver.**— Corporation in falling circumstances; transfer of personality in payment of a bona fide debt does not evidence fraud. *Beach v. Miller*, 23 Ill. App. 151.

A creditor's bill against an insolvent corporation, its officer and stockholders, may seek discovery not only, but to have certain payments declared fraudulent as to creditors. Discovery failing, the bill may be retained as to the further relief. *Bouton v. Smith*, 113 Ill. 487.

Corporation may be dissolved if it be insolvent, has ceased and is unable to do business, and has debts unpaid. *St. L., etc., Co. v. Sandoval, etc.*, Co., 116 Ill. 172; s. c., 5 N. E. Rep. 370.

On dissolution a court of equity will lay hold of the corporate property to distribute it for the benefit of creditors and stockholders. *Id.*

Civil death. Generally, where the charter of or the franchise to be a corporation is transferred or sold there is a surrender or abandonment of the old corporation by the corporators. The effect is the same as though the old corporation was dissolved and its franchise surrendered to the State. *Snell v. Chicago*, 133 Ill. 430; s. c., 24 N. E. Rep. 532.

Unpaid stock liabilities are assets, and a corporation is not insolvent where the sum liable to call on stock, held by solvent stockholders, exceeds amount of its debts, though it has no tangible property. *Matson v. Alley*, 41 Ill. App. 72. In the absence of any fraudulent purpose, it is competent for a corporation to prefer a creditor, and such creditor may be wife of the president. *Ragland v. McFall*, 137 Ill. 90; s. c., 27 N. E. Rep. 75.

Stockholders of an insolvent corporation will be liable to creditors unless there has been given for the stock the equivalent in money or money's worth. *Thayer v. El Plomo M. Co.*, 40 Ill. App. 347.

When corporation becomes insolvent, directors become trustees for all creditors, and can neither give away assets nor use them to exonerate themselves to the injury of other creditors. *Atwater v. Bank*, 40 Ill. App. 503; *Roseboom v. Whittaker*, 132 Ill. 87; s. c., 23 N. E. Rep. 339; *Beach v. Miller*, 130 Ill. 170; s. c., 22 N. E. Rep. 464; *Bank v. Burch*, 40 Ill. App. 515. An officer or director, having loaned money to and taken security from a solvent corporation, has same right as a stranger to recover the loans and enforce the securities upon subsequent insolvency. *Bank v. Schott*, 135 Ill. 673.

The right of a creditor to obtain a preference over other creditors of an insolvent corporation is expressly recognized in *Burch v. West*, 134 Ill. 258; *Bank v. Burch*, 40 Ill. App. 515.

It is proper to assume that any arrangement between the officers of an insolvent corporation

and their individual creditors that the property of the corporation is to be applied to the payment of the private debts of the officers, is a fraud on the corporation's creditors. *Bank v. Moore*, *id.* 339.

The officers of an insolvent corporation may not "use up" its assets in payment of their own claims. An attempt to do so is void, as against the process of an outside creditor. *McNeill v. Lacey*, 33 Ill. App. 311; *Roseboom v. Whittaker*, *id.* 443.

The insolvency of a corporation does not, per se, put an end to power of company to manage its assets and fix the liens of creditors. *Brabrook T. Co. v. Belding*, 40 Ill. App. 326.

No bill to administer assets of an insolvent corporation can be maintained against it alone, without the acquiring of an equitable lien by exhausting the remedy at law. *Taylor Co. v. Woolverton*, 37 Ill. App. 362.

After aid of equity has been invoked and court has taken assets of an insolvent corporation into its hands, its jurisdiction is exclusive and, ordinarily, no creditor can pursue a remedy at law in such way as to obtain, for himself, a preference. *Roseboom v. Whittaker*, *supra*.

The failure in a creditor's bill against an insolvent corporation to make some creditors parties must be made in the trial court. The objection comes too late on appeal to the supreme court. *Id.* Where certain creditors file a creditor's bill they will not be entitled to priority over other creditors not having judgments. *Talcott v. G. W., etc., Co.*, 131 Ill. 253; s. c., 23 N. E. Rep. 403.

When sale by corporation of property to creditor is attacked, as in fraud of creditors, it is competent to prove that company was embarrassed or insolvent. *Beach v. Miller*, *supra*.

Section 25 construed. *Man. Co. v. C. C. Co.*, 55 Ill. App. 381.

Directors of a corporation so utterly insolvent as to have abandoned all efforts to continue business can give preference to creditors having knowledge of its condition. *Gottlieb v. Miller*, 47 Ill. App. 588. A distinction between a corporation so insolvent as to have stopped business, giving preferences, and one, by giving a preference, incapacitates itself for further business. *Id.*

Right of insolvent corporation to prefer creditors. *Glover v. Lee*, 140 Ill. 102; s. c., 29 N. E. Rep. 680.

Capital stock is a trust fund in hands of directors for the payment of the corporate debts, and shareholders are conclusively charged with notice of the trust character which attaches to capital stock, and cannot occupy the status of innocent purchasers. *Bank v. Burch*, 141 Ill. 519; s. c., 31 N. E. Rep. 420.

Board of directors of an insolvent corporation may empower president and secretary to make assignment to a creditor. *Id.*

Powers of court to wind up affairs of an insolvent corporation. *Wheeler v. Iron & Steel Co.*, 143 Ill. 197; s. c., 32 N. E. Rep. 420.

A corporation, unless restricted by its charter or by general statutes, may make assignment for benefit of creditors to the same extent that an individual may, and may make preference for one or more creditors, or class of creditors, over others. But preference by directors to themselves is generally fraudulent. *Warren v. Bank*, 149 Ill. 9. Assets, how far a trust fund. *Id.*

It is the settled law of this State that a corporation may prefer creditors. *Paper Co. v. Robbins*, 151 Ill. 588; s. c., 38 N. E. Rep. 153. But it must be done in the utmost good faith. *Id.*

If solvent, corporation may make preferential transfers of the corporate assets, so long as it acts in good faith. *Peterson v. Tailoring Co.*, 150 Ill. 290; s. c., 37 N. E. Rep. 242.

Assets of an insolvent corporation are not strictly a trust fund, nor are the officers strictly trustees. At most, the assets are a quasi trust fund, and officers quasi trustees, under some circumstances. *Gottlieb v. Miller*, 154 Ill. 44; s. c., 39 N. E. Rep. 992. And in absence of legislation to the contrary, the insolvent corporation may make a preference among creditors, subject to the same restrictions that apply to individual debtors. *Id.* Directors cannot appropriate assets when in-

solvent. *Id.* Creditors of a firm whose members were directors of a corporation have no standing to impeach the conduct of a company, its directors and officers, in making preferences. *Id.*

Assignment of corporation for benefit of creditors, what is not. *Peterson v. Tailoring Co.*, 51 Ill. App. 249.

When solvent corporation has borrowed money from its officers or directors, its subsequent insolvency will not affect their right of action to recover the loan. *Steele Co. v. O'Donnell*, 156 Ill. 624; s. c., 41 N. E. Rep. 185. And such relationship will not prevent an insolvent corporation from giving such creditor officer a valid security as a preference. *Id.*

Merely allegation that corporation has "ceased doing business" not enough to justify appointment of receiver under this statute. *Irabrook, etc., v. Belding*, 40 Ill. App. 329. It must be shown that such cessation is more than an interruption of the ordinary course of business. *Id.* Appointment of receiver is an act divesting corporation of control of its property, suspending its powers and likely to result in its dissolution. Hence statute authorizing it must be strictly construed. *Id.*

After receiver appointed, corporation still exists to exercise any of its franchises not interfering with receiver's performance of his duty. *Ry. Co. v. Russell*, 115 Ill. 54; s. c., 3 N. E. Rep. 561. And may sue any person, by leave, to try title to property. *St. L., etc., Co. v. S. C. & M. Co.*, 111 Ill. 39. Receiver may, in proper case, be appointed before jurisdiction required to adjudicate. *Id.*

Equity acquires jurisdiction to appoint a receiver of corporate assets by service on the corporation. *Bates v. Tel. Co.*, 134 Ill. 549; s. c., 25 N. E. Rep. 521; *Tel. Co. v. Gray*, 122 id. 634; s. c., 14 N. E. Rep. 214. In action by receiver to collect unpaid subscriptions to stock, the validity of decree appointing him cannot be questioned. *Id.* Receiver may be appointed when directors are guilty of mismanagement and malfeasance, and court may order him to sue for unpaid subscriptions to stock. *Id.*

Receiver can sue in name of corporation upon debts due to it. *Ramsey v. Ins. Co.*, 55 Ill. 311; see, also, *Ins. Co. v. Bank*, 63 id. 348.

Appearance by a receiver of an insolvent corporation empowered to sue, etc., at the time of entering a deficiency decree in foreclosure waives notice of application therefor. *Land Co. v. Peck*, 112 Ill. 431.

A court of chancery having jurisdiction of the property of an insolvent corporation and of a defendant claiming it, an order on the latter to turn the same over to a receiver, for presentation, however erroneous, must be obeyed; error will not justify refusal. *Tolman v. Jones*, 114 Ill. 153; s. c., 28 N. E. Rep. 464.

Receiver is regarded as representing only the corporation itself—not creditors or stockholders. For purposes of litigation he takes only such rights as the corporation might assert. *Ins. Co. v. Swigert*, 135 Ill. 167; s. c., 25 N. E. Rep. 680. And by section 25 is authorized to sue in all courts, etc., without an order of court authorizing him to bring suit. *Hanke v. Blatner*, 34 Ill. App. 397.

Bill filed by stockholder asking for a receiver is bad, on demurrer, if it does not allege facts showing any of the causes named in the statute as ground of equitable interference. And if bill appeals merely to the general chancery powers of the court, it will not be sufficient. *Wheeler v. Iron & Steel Co.*, 143 Ill. 197; s. c., 32 N. E. Rep. 420.

Rule that a foreign receiver will not be allowed to maintain an action against the assets of an insolvent debtor as against a resident creditor, does not apply to the receiver appointed by the courts of this State, and under its laws, in a suit instituted by a non-resident creditor. *Hollbrook v. Ford*, 153 Ill. 623; s. c., 39 N. E. Rep. 1691; s. c., 50 Ill. App. 547. Receiver of property of a foreign corporation takes no title to debts due it from debtors in another State, although, in the ordinary course of business of corporations, the debts would have been payable in the State of his appointment. *Id.* The locus of a debt is the domicile of

the creditor, which, in case of a corporation, is the State of its creation. *Id.*

Creditors of an insolvent corporation may proceed with all legal remedies until court of equity obtains jurisdiction over it. *Bank v. Bank*, 53 Ill. App. 358.

Insolvent corporation may prefer creditors. *O'Donnell v. Steel Co.*, 53 Ill. App. 314. Rights of director creditors. *Id.*

When stockholders are necessary parties to suit against corporation. *Bennett v. Tel. Co.*, 53 Ill. App. 276; *Tel. Co. v. Barker*, 56 id. 402.

A franchise is involved in a suit to dissolve a corporation and appoint a receiver. *O'Donnell v. Steel Co.*, supra.

To sustain a bill which seeks appointment of receiver and winding up of affairs of a corporation, allegations of fraudulent mismanagement should be specific and definite, so that court can see that charges are not mere conclusions of the pleader. *Wheeler v. P. I. & S. Co.*, 43 Ill. App. 626.

Courts proceed with caution in the appointment of receivers to take the property of a corporation out of control of its officers and to justify such appointment for a solvent, prosperous corporation, the circumstances must be extraordinary, and something more must be shown than past misconduct and a mere apprehension based thereon of future misdoing. *Natatorium Co. v. Heissler*, 50 Ill. App. 406.

Assessments upon stock of an insolvent corporation must be equitable. *Bennett v. Tel. Co.*, 53 Ill. App. 277.

Corporation not dissolved by neglect to elect officers. § 14, and note.

Sale of property of a corporation does not disorganize it. *Bruffett v. R. R. Co.*, 25 Ill. 353; *Reichwald v. Hotel*, 106 id. 439. Stockholders not necessary parties to a creditor's bill to dissolve insolvent corporation. *Bates v. Tel. Co.*, 134 Ill. 549; s. c., 25 N. E. Rep. 521.

A judgment declaring a forfeiture of franchises, rights and privileges of a corporation, where there has been no prior waiver of the right of forfeiture, will operate to produce a dissolution of the corporation. *Danv. Sem. v. Mott*, 136 Ill. 292; s. c., 28 N. E. Rep. 54.

In a proceeding to wind up the affairs of a corporation at the instance of creditors, a dissolution of the company decreed cannot work injury to the stockholders held to liability on the unpaid balances of stock held by them, when the assets of the corporation are exhausted, and it has ceased to do business. *Alting v. Wenzell*, 35 Ill. App. 247.

Bill by stockholders for dissolution and assessment on unpaid stock to pay debts. In absence of injury to creditors a decree is not erroneous which omits to assess one who subscribed as trustee under agreement that "trustee stock" should be assessed, the other stockholders not being assessed in excess of their indebtedness. *Winston v. Dorset P. & R. Co.*, 129 Ill. 70; s. c., 21 N. E. Rep. 514.

The rule is, that in the absence of statutory provision, courts of equity have no jurisdiction to decree dissolution of a corporation, by forfeiture of its franchises, either at suit of an individual or of the State. *Ins. Assn. v. Hunt*, 127 Ill. 274; s. c., 20 N. E. Rep. 55.

An information filed in a court of equity, for dissolution of a corporation, on some ground enumerated in statute of its creation, is not a criminal proceeding. It is not required to be carried on "in the name and by the authority of the people," etc. *Chicago M. L. Ins. Assn. v. Hunt*, 127 Ill. 275; s. c., 20 N. E. Rep. 55.

A court or receiver appointed by it, under bill filed by some stockholders of a corporation, praying, *inter alia*, for dissolution of company, its directors only being named as defendants, acquires no control of the stockholders. *Robinson v. Raulston*, 33 Ill. App. 166.

The title of a corporation to property owned by it ceases when the corporation itself ceases to exist. *Mott v. Danv. Sem.*, 129 Ill. 409; s. c., 21 N. E. Rep. 927.

Hence, at common law, on dissolution or civil death of a corporation, all its real estate remaining unsold reverts to the original grantor or his heirs. *Id.*

## Insolvency; foreign corporations — R. S., ch. xxxii, § 26.

The rule of the common law has been changed in modern times, at least in favor of corporations, for pecuniary profit. *Id.*

In such corporations shareholders are the original donors of the corporate property, each contributing to the capital for the common benefit. The corporation, so long as it is solvent, holds the property merely as trustee for its shareholders. *Id.*

When such corporate body is dissolved or becomes insolvent, equity distributes its property: (1) to pay its debts, and (2) among its stockholders. *Id.*

Insurance corporations. Insolvent, may be dissolved at the suit of the auditor. *Ins. Co. v. The Auditor*, 101 Ill. 82.

What constitutes "good cause" for dissolving a corporation. *Wheeler v. Iron & Steel Co.*, 143 Ill. 197; s. c., 32 N. E. Rep. 420. Disposition of assets on dissolution. *Id.* Remedy of stockholder for mismanagement and fraud in affairs of company. *Id.*

At common law a corporation cannot be dissolved at instance of an individual, and the State, or attorney-general, is a necessary party to any suit to dissolve. But legislature may provide by statute for absolute and final dissolution of a corporation at the suit of an individual. *Hunt v. Rink Co.*, 143 Ill. 118; s. c., 32 N. E. Rep. 525. Without statutory authority court of chancery has no jurisdiction to decree the dissolution of a corporation, the mode of procedure would be by scire facias or quo warranto, in a court of law. *Id.*; *Wheeler v. Iron & Steel Co.*, *Id.* 197; s. c., 32 N. E. Rep. 420.

Mere fact that domestic corporation has kept its books in another State, when such books have always been found at the office in this State when needed for inspection, not sufficient ground for dissolving the corporation. *Rolling Stock Co. v. People*, 147 Ill. 234; s. c., 35 N. E. Rep. 608.

Jurisdiction of a court of equity to dissolve a corporation is derived entirely from section 25, and forms no part of the general chancery jurisdiction. *Steel Works v. Steel Co.*, 153 Ill. 9; s. c., 38 N. E. Rep. 1033.

Cessation of business by a corporation because of the levy of attachments upon its property is not a ceasing to do business, within meaning of statute authorizing its dissolution by a court of equity and the appointment of a receiver, on a bill by a single stockholder, to which only part of the creditors are made parties. *People v. Weigley*, 155 Ill. 491; s. c., 40 N. E. Rep. 300.

Courts of chancery are without jurisdiction to decree dissolution of corporation, except so far as such jurisdiction is conferred by section 25 of corporations act, and can dissolve them for no causes other than those therein mentioned. *Id.*

A transfer to the trustees of the accounts belonging to a corporation, duly made and noted on books of corporation under authority of board of directors and accepted by trustee in writing, with notice from him to the parties whose accounts are assigned, and also to the persons for whom he is acting as trustee, is sufficient to vest in the trustee right to the money derived from the accounts, although subsequently, on the same day, a bill was filed for a receiver and to wind up corporation. *Trust Co. v. Smith*, 158 Ill. 417; s. c., 41 N. E. Rep. 1076.

A preference by the assignment of accounts made by a corporation is not defeated by section 25 of act of corporation, providing for winding up all business of corporations by suit in equity, although such suit is brought immediately after assignment. *Id.*

Directors may give preference to a relative. *Blair v. Steele Co.*, 159 Ill. 350; s. c., 42 N. E. Rep. 895. Preference may be given debts guaranteed by directors. *Id.* Stockholders may be preferred creditors. *Parsons v. Hatton*, 58 Ill. App. 272.

Corporation may prefer one creditor from another in the payment of its own debts, and no inference of fraud can be brought from the mere fact that such a preference has been given by the execution of judgment notes. *Dibblee v. Watson*, 60 Ill. App. 432.

Courts of chancery are without jurisdiction to

decree dissolution of corporations, except in so far as that jurisdiction is conferred by statute. *Ward v. Segar*, 60 Ill. App. 424.

An agreement between an insolvent corporation and holders of claims, held not to create an agreement not to sue certain stockholders or to amount to a release. *Farwell v. G. W. Tel. Co.*, 44 N. E. Rep. 891.

An order of an assessment against stockholders on petition of a receiver without notice was void as to those not parties, under the Corporation Act of 1872. *Id.*

Where a holder of claims against an insolvent corporation agreed with certain stockholders to hold them harmless so far as his interest was concerned, it was a covenant not to sue, and did not release such stockholders from an assessment. *Id.*

A stockholder may sue the corporation and others without a request on its receiver to bring such suit, where what was equivalent to a refusal by the receiver to do so is shown in the bill. *Id.*

Creditors of a corporation are not necessary parties to a bill by stockholders brought against a receiver of the corporation to undo the act of the court, when improperly obtained. *Id.*

Rights of stockholders to file a bill of review where the interest of the receiver of the corporation is hostile to the stockholders' interests. *Id.*

Where certain claimants had, by fraud on the court, obtained a large sum belonging to an insolvent company, held, that each of them should be compelled to account for the amount received by him. *Id.*

§ 26. Foreign corporations, and the officers and agents thereof, doing business in this State, shall be subjected to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers. And no foreign or domestic corporation established or maintained in any way for the pecuniary profit of its stockholders or members, shall purchase or hold real estate in this State, except as provided for in this act.

See § 5, ante, notes, and cross-references. Corporation acting by attorney. § 66, post. Requirements of foreign corporations. See Act of 1897, at p. 57.

[Corporation created in another State for the purpose of buying and selling lands has no such power in this State. *Carroll v. City*, 67 Ill. 568.

The legislation of a State bordering on this, cannot have the least effect in creating a corporation in this State. *Bridge Co. v. County*, 88 Ill. 615.

And a corporation of another State, which cannot there hold title to real estate, is incapable of so holding in this State. *Starkweather v. A. B. Soc.*, 72 Ill. 50; *U. S. T. Co. v. Lee*, 73 id. 142.

Foreign corporations have power to loan money and receive mortgage security, and may acquire real estate in satisfaction of debts due them. *Assurance Co. v. Scammon*, 102 Ill. 46; *Buggy Co. v. Graves*, 108 id. 459.

Where real estate, belonging to a bank of another State, was attached in our courts, it afforded no ground for quashing the writ of attachment. *Ins. Co. v. Coml. Bk.*, 68 Ill. 348.

Corporation having power to take and hold real estate, a deed to it divests grantor of his title; whether the taking is ultra vires is a question only for the State. *Barnes v. Suddard*, 117 Ill. 239; s. c., 7 N. E. Rep. 477.

Corporation formed under laws of another State with capacity to hold real estate may acquire

such property here as is necessary to its business. *Id.*

The statute does not necessarily exclude foreign corporations carrying on a special business, for which it is organized exclusively in another State, from receiving lands in this State by devise. *S. Clara Fem. Acad. v. Sullivan*, 116 Ill. 380; s. c., 6 N. E. Rep. 183.

The right of a corporation, created in one State to do business in another, is based upon the comity between the States. *Ibucut v. City*, 48 Ill. 172.

Foreign corporations doing business in this State have the same power, no greater, than a domestic company. *Barnes v. Suddard*, supra. And are under the same restrictions, but this is without reference to the mode of organization or advent into existence. *S. Clara Fem. Acad. v. Sullivan*, 116 Ill. 380; s. c., 6 N. E. Rep. 183.

Corporation has its residence where its business is done. *Bristol v. R. R. Co.*, 15 Ill. 436; *R. R. Co. v. Morgan Co.*, 14 Ill. 103.

A foreign corporation owing debts, if still in existence, can be compelled, by mandamus or bill in equity, to collect its unpaid subscriptions, wherever the stockholders reside. If it has ceased to exist a receiver should be appointed and, by comity, his rights will be respected in other States. *Patterson v. Lynde*, 112 Ill. 205.

Foreign insurance companies doing business in this State will be bound by the acts of their president and general agents. *Ins. Co. v. White*, 106 Ill. 67. And before taking risks in this State they must comply with the laws of this State and receive a license. *Ins. Co. v. Swigert*, 120 Ill. 37; s. c., 11 N. E. Rep. 410. And they must be organized as a joint-stock or mutual company. *Id.*

A corporation may, by comity, exercise its powers outside of the jurisdiction in which it is created. If such acting be not inconsistent with the laws or public policy of the State in which they are so exercised. *S. Clara Fem. Acad. v. Sullivan*, 116 Ill. 380; s. c., 6 N. E. Rep. 183. But it is impossible that a corporation created under the laws of one State can be incorporated into another corporation created under the laws of a sister State. *Drum Tob. Co. v. Randle*, 114 Ill. 427; s. c., 2 N. E. Rep. 536.

The authority to inquire, by quo warranto, whether a corporation de facto, organized and acting under the law of another State is, in all respects, a legal and valid corporation, belongs to such State and to it alone. *Hudson v. G. H. Semin.*, 113 Ill. 626. A special statute of such State is admissible to show a de facto existence, though such an act by Constitution be prohibited. *Id.*

Foreign corporation, insolvent and owing debts. If still existing, it may be compelled, by mandamus or bill in equity, to collect its unpaid subscriptions wherever the stockholders reside. If it has ceased to exist a receiver should be appointed; by comity other States will recognize him. *Patterson v. Lynde*, 112 Ill. 206.

Where it is impossible to acquire jurisdiction of the corporation and non-resident stockholders have no property in the State, a bill to enforce the payment of unpaid subscriptions to stock is vulnerable to demurrer. *Id.*

Indebtedness of resident stockholders for stock to a foreign company may be reached by attachment and garnishment, although service cannot be had on the corporation. *Turner v. Ala. N. & M. Co.*, 25 Ill. App. 144. But a creditor must exhaust his remedy at law here by execution returned nulla bona. *Id.*

Legal existence of a foreign corporation in issue; such existence must be proved by proper evidence. *Bourton v. Rathbone*, 23 Ill. App. 654.

Right of foreign corporation to enter this State discussed. *Boller Co. v. Boller Co.*, 142 Ill. 494; s. c., 30 N. E. Rep. 339.

Foreign corporations on same footing as domestic as to powers, duties, liabilities and restrictions. *Ins. Co. v. Bauerle*, 143 Ill. 459; s. c., 33 N. E. Rep. 166; *Prov. Assn. v. Lloyd*, 145 ill. 620; s. c., 34 N. E. Rep. 142. What is the "doing of business" in this State. *Id.*; *Mandel v. L. & C. Co.*, 154 Ill. 177; s. c., 40 N. E. Rep. 462.

It is the charter of the corporation alone which, by the law of comity, is recognized and enforced in other jurisdictions, and not the general legislation or local policy of the State in which the company is formed. *Warren v. Bank*, 149 Ill. 9; s. c., 38 N. E. Rep. 122.

Filing of a creditor's bill against a foreign corporation creates no lien upon debts due such corporation from residents of a State other than that in which such bill is brought, where there is no service of process upon the corporation. *Holbrook v. Ford*, 153 Ill. 633; s. c., 39 N. E. Rep. 1091.

Foreign corporation is "resident" where, by proper permission, it carries on its business. *Pennsylvania Co. v. Sloan*, 1 Ill. App. 364. Corporation of one State may remove its officers and agents into another by permission of the latter, and exercise its franchise there. *Id.*

Words "doing business in this State," in the statute limiting the powers of foreign corporations, refer to the business for which the foreign corporation is organized, and not to its doings with its own members, or its resort to the courts here to enforce liabilities. *Mandel v. Land Co.*, 154 Ill. 177; s. c., 40 N. E. Rep. 462.

A foreign corporation, in so far as it is doing business in Illinois, through any control it may exercise over a business transferred to it by a resident of Illinois, is subject to the same restrictions and duties as corporations formed in this State. *Bishop v. American Co.*, 157 Ill. 284; s. c., 41 N. E. Rep. 765.

Proof of de facto existence of foreign corporation held sufficient. *Cozens v. Chicago H. P. B. Co.*, 46 N. E. Rep. 788.]

§ 27. The certified copy of any articles of incorporation, and changes thereof, together with all indorsements thereon, under the great seal of the State of Illinois, shall be taken and received in all courts and places as prima facie evidence of the facts therein stated.

Records of private corporation, how certified. Ch. 51, § 15. Charter, what to contain. § 2, ante. Proof of corporation. Ch. 38, § 110.

[Certified articles of association, evidence that the capital stock has been subscribed. *Jewell v. R. R. Paper Co.*, 101 Ill. 57.

A copy of articles of incorporation certified by the secretary of State bearing the State seal, together with all the indorsements thereon, is prima facie evidence of the facts therein stated. *Kern v. Chicago Co-op. B. Co.*, 40 Ill. App. 357.]

§ 28. Nothing in this act shall be construed to allow the construction or operation of any street railroad in any city, town or incorporated village, without the consent of the local authorities thereof.

See Const., art. XI, § 4. General powers. § 5, ante, notes and cross-references.

[Such consent not a condition precedent to exercise of power of eminent domain. *Metropolitan, etc., Co. v. Chicago, etc., Co.*, 87 Ill. 317.]

§ 28½. It shall be unlawful for the secretary of State to issue a license for any person or persons to incorporate under the name of any heretofore existing corporation organized under any general law of this State until the expiration of thirty days from and after the expiration of the existence of such corporation: Provided, That the corporation enjoying such name

Repeal; voluntary dissolution — R. S., ch. xxxii, §§ 48-49c.

shall have the exclusive privilege of becoming incorporated under the same name at any time within the said thirty days, according to the provisions of the act to which this is an amendment. (As amended by act approved June 16, 1887; in force July 1, 1887.)

See § 2, ante. Continuance after expiration, etc. §§ 10-12, ante. When dissolved, corporate name. § 49c, post.

[Appearance to defend by a corporate name is an admission that such is the true name. *U. S. Ex. Co. v. Bedbury*, 34 Ill. 459.]

### General Provisions.

§ 48. No corporation, association or society for any purpose authorized by this act shall be formed under any other act.

§ 49. All acts or parts of acts in conflict with the provisions of this act are hereby repealed: Provided, That the repeal of said acts shall not affect any corporations existing under any such acts, or any rights or liabilities that may have accrued when this act shall take effect; but such rights and liabilities shall remain as though this act had not been passed.

See §§ 1-49, ante. Organization completed. § 4, ante.

AN ACT to amend an act entitled "An act concerning corporations," approved April 18, 1872, in force July 1, 1872, by providing for the voluntary dissolution of corporations organized or hereafter organized upon the stock plan thereunder, by adding thereto four sections to be numbered sections 50, 51, 52 and 53 respectively. [Approved June 17, 1895; in force July 1, 1895; L. 1895, p. 133; Legal News Ed., p. 98.]

§ 49a. Be it enacted by the People of the State of Illinois, represented in general assembly, That an act, entitled "An act concerning corporations," approved April 18, 1872, in force July 1, 1872, be and the same is hereby amended so as to provide for the voluntary dissolution of corporations organized or hereafter organized upon the stock plan thereunder, by adding thereto the following sections to be numbered section 50, section 51, section 52 and section 53 respectively.

Dissolution, proceedings for. §§ 149 et seq., post. Remedies not affected by dissolution. § 12, ante.

§ 49b. Whenever two-thirds of the stockholders of any corporation organized or hereafter organized under the provisions of this act upon the stock plan may desire to abandon the corporate enterprise, surrender their charter, franchises and corporate name, and dissolve the corporation, it shall be the duty of the board of directors or

managers thereof to submit the question of such dissolution to a vote of the stockholders at any annual or a special meeting of such stockholders to be called and held as herein provided.

See § 3, ante, and cross-references.

[Reverting of corporate property on dissolution; limits of rule. *Church v. Venable*, 159 Ill. 215; s. c., 42 N. E. Rep. 600.]

§ 49c. Such meeting shall be called by delivering personally or depositing in the post-office at least thirty days before the time fixed for such meeting a notice properly addressed to each stockholder, signed by a majority of said directors or managers, stating the time, place and object of said meeting, and a general notice of the time, place and object of such meeting shall also be published for three successive weeks in some newspaper published in the county wherein the principal office of said corporation is located.

See § 3, ante, and cross-references.

§ 49d. At such meeting, stockholders shall vote in person, each stockholder being entitled to one vote for each share of stock held by him, and votes represented by at least two-thirds of the whole capital stock of such corporation shall be necessary to effect a dissolution thereof, and if at any such meeting said stockholders shall in the manner herein provided agree to dissolve said corporation, they shall cause a complete record of all proceedings taken with respect thereto, reciting therein the adoption of a resolution to that effect, which shall also show that the corporate debts have been fully paid, the corporate liabilities completely discharged, and the corporate assets and property distributed among all the persons entitled thereto, to be made and signed by the president, and the adoption thereof and recitals therein verified by his sworn affidavit, and attested by the secretary under his signature and the corporate seal. Said record shall be filed in the office of the recorder of deeds of the county wherein the principal office of such corporation is located and by him recorded and a notice of such dissolution published for three successive weeks in any newspaper published within such county and within three months after such dissolution shall have been so agreed upon, the record aforesaid, bearing thereon the certificate of recordation executed by the recorder of deeds of the proper county, shall be filed in the office of the secretary of State.

See § 3, ante, and cross-references.

§ 49e. The provisions of this act having been complied with, said corporation shall

(Change of name; increase of stock, etc.—R. S., ch. xxxii, § 50.

be deemed and taken to be dissolved in all courts and places whatsoever, and from and after such dissolution hereunder, it shall be lawful for the secretary of State to issue a license to any person or persons to incorporate under the name or names previously used by such corporation at any time after the dissolution thereof: Provided, That a majority of the stockholders in number and amount of any such corporation enjoying such name shall have the exclusive privilege of becoming incorporated under the same name at any time within the said thirty days, according to the provisions of the act to which this is an amendment.

Continued after expiration of charter. § 10, ante. Corporate name. § 28 1-2, ante.

### Change of Name, Increase of Capital Stock, Etc.

AN ACT to provide for changing the names, for changing the places of business, for increasing or decreasing the capital stock, for increasing or decreasing the number of directors, for enlarging or changing the objects for which such corporations were formed, and for the consolidation of incorporated companies. Approved March 26, 1872, as amended June 4, 1887, and June 6, 1889. [Title as amended June 6, 1889.]

§ 50. Be it enacted by the people of the State of Illinois, represented in the general assembly: That whenever the board of directors, managers or trustees of any corporation existing by virtue of any general or special law of this State, or any corporation hereafter organized by virtue of any law of this State, may desire to change the name, to change the place of business, to enlarge or change the object for which such corporation was formed, to increase or decrease the capital stock, to increase or decrease the number of directors, managers or trustees, or to consolidate said corporation with any other corporation now existing, or which may hereafter be organized, they may call a special meeting of the stockholders of such corporation, for the purpose of submitting to a vote of such stockholders the question of such change of name, change of place of business, enlargement or change of the object for which such corporation was formed, increase or decrease of the number of directors, managers or trustees, increase or decrease of capital stock, or consolidation with some other corporation, as the case may be; and further that eleemosynary or religious corporations for educational purposes, acting under the general law or by virtue of special charter are authorized to change the time and manner of electing the trustees, and to allow the alumni of said corporation to vote in the election of the trustees, or a part thereof: Provided, That in changing the name of any other corporation, under the

provisions hereof, no name shall be assumed or adopted by any corporation similar to, or liable to be mistaken for the name of any other corporation organized under the laws of this State, without the consent of such other corporation; and that in no case shall the capital stock be diminished to the prejudice of the creditors of such corporation, or the number of directors, managers or trustees be reduced to less than five, or in case of corporations for pecuniary profit, increased to more than eleven: And, provided, further, That no corporation shall, by virtue hereof, change its place of business from any town, county or municipality, where such town, county or municipality, or any of the inhabitants thereof, or any person or persons interested therein, shall have donated or in any manner contributed any money or any other valuable thing to induce such corporation to locate in such town, county or municipality: And provided further, That the provisions of this act, in reference to the consolidation of corporations, shall only apply to corporations of the same kind, and engaged in the same general business, and carrying on their business in the same vicinity, and that no more than two corporations now existing shall be consolidated into one, under the provisions hereof: And provided further, That no alteration or change shall be made by virtue of this section to embrace any object that might not have been lawfully embraced in the statement and license issued before the organization of such corporation as provided in section two of an act entitled, "An act concerning corporations," approved April 10, (18) 1872, and in force July 1, 1872.

(As amended by acts approved June 14, 1887, and June 6, 1889.)

See § 3, ante, and cross-references. Stock, payment, etc. § 7, ante. Name, see § 2, note.

[Amendment of charter, as affecting liability of stockholders. *Dows v. Naper*, 91 Ill. 44. Binding upon the company. *People v. Imp. Co.*, 103 Ill. 491.

The charter allowing an increase of stock, but silent as to the mode, shareholders should have a voice in determining it. *Eidman v. Bowman*, 58 Ill. 444; *City v. Joney*, 60 id. 383.

To issue certificates of stock for amount of subscription paid, and cancel the subscription as to sum not paid, is not diminishing its capital stock. *Chetlain v. Ins. Co.*, 86 Ill. 220.

A corporation cannot, except as authorized by law, change its own name, either directly or by user. *Sykes v. People*, 132 Ill. 46; s. c., 23 N. E. Rep. 391.

Reduction of capital stock; presumption that notices were given as required by law; and that the meeting for that purpose was regularly called. *B. & T. Co. v. Gade*, 55 Ill. App. 182.

Corporation may, by vote of stockholders, at meeting duly called, change its name; but new name must not be the same, or similar to, or be liable to be mistaken for, the name of any other corporation of the State, without consent of such other corporation. *Watch Case Co. v. Pearson*, 140 Ill. 423; s. c., 31 N. E. Rep. 400. And this, though the other corporation is not fully organized, and, therefore, incapable of consenting. After a corporation is licensed its name is to be protected. *Id.*

Change of name; increase of stock, etc.—R. S., ch. xxxii, §§ 51-57.

A secretary of State may, when he knows that the new name is that of some other corporation, refuse to allow it to be filed in his office. *Id.*

Directors have not, merely by virtue of their position as directors, authority to increase the capital stock without the assent of the stockholders. *McNulta v. Bank*, 45 N. E. Rep. 954.

A corporation held to have such an existence as to enable its officers and stockholders to reduce the capital stock. *Gade v. Perkins*, 46 N. E. Rep. 286.

Evidence held to show valid reduction of capital stock. *Id.*

Rights of creditors on reduction of capital stock determined. *Id.*

§ 51. Such special meetings shall be called by delivering personally, or depositing in the post-office, at least thirty days before the time fixed for such meeting, a notice, properly addressed to each stockholder, signed by a majority of said directors, managers or trustees, stating the time, place and object of such meeting. A general notice of the time, place and object of such meeting shall also be published, for three successive weeks, in some newspaper printed in or nearest the county in which the principal business office of said corporation is located.

See § 60, post.

[Notice required by above section is intended only for stockholders. The notice required to be given to the public is the final notice required by section 54. Hence the notice of the meeting of the stockholders is no notice to the proposers of a new corporation of the new name proposed to be adopted. *Watch Case Co. v. Parsons*, 140 Ill. 423; s. c., 31 N. E. Rep. 400.]

§ 52. At any such meeting, stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each share of stock held by him; and votes representing two-thirds of all the stock of the corporation shall be necessary for the adoption of the proposed change of name, place of business, enlargement or change of the object for which such corporation was formed, number of directors, managers or trustees, amount of capital stock, or consolidation with some other company.

(As amended by act approved June 6, 1889.)

Executors may vote. § 24, ante. Manner of voting, proxies. § 61, post.

§ 53. If, at any regular annual meeting, or at the time and place specified in said notice of a special meeting called for that purpose, said propositions, or any of them, be submitted to a vote, and if it shall appear that two-thirds of all the votes represented by the whole stock of such corporation are in favor of the propositions, or of any of them, so submitted, a certificate thereof, verified by the affidavit of the president, and under seal of said corporation, shall be filed in the office of the secretary of State, and a like certificate filed for record in the office of the recorder of deeds of the county where the principal business office of such corpora-

tion is located. And upon the filing of such certificate, the changes proposed and voted for at such meeting as to name, place of business, enlargement or change of the object for which such corporation was formed, increase or decrease of capital stock, increase or decrease of the number of directors, managers or trustees, or consolidation with some other company, shall be, and is hereby declared accomplished, in accordance with said vote of the stockholders: And provided further, That any corporation, other than corporations for manufacturing purposes, availing itself of, or accepting the benefits of, or formed under this act (except the mere change of name), shall be subject to the general laws of this State now in force, or which may hereafter be passed, regulating corporations of like character.

(As amended by act approved June 6, 1889.)

See § 4, ante. Certificates of votes filed. § 62, post.

§ 54. Such corporation shall, upon the filing of said certificate, cause to be published in some newspaper in, or nearest the county in which their principal office is located, a notice of such changes of organization, for three successive weeks.

See § 51, and note.

§ 55. Corporations, not being stock companies, may avail themselves of all the privileges and provisions of this act, by a majority vote of the members of such corporations who may be present at a meeting called for any of the purposes included in this act.

See § 3, ante, and cross-references.

§ 56. Such change of name, place of business, enlargement or change of object for which such corporation was formed, increase or decrease of capital stock, or increase or decrease of number of directors, managers or trustees, or consolidation of one corporation with another, shall not affect suits pending in which such corporation or corporations shall be parties, nor shall such changes affect causes of action, nor the rights of persons in any particular; nor shall suits brought against such corporation by its former name be abated for that cause.

(As amended by act approved June 6, 1889.)

See § 5, subd. 1, ante, and cross-references.

§ 57. Whenever any railroad corporation shall desire to consolidate with any other railroad corporation, by virtue of the provisions of this act, a notice, as provided by section two of this act, shall be given at least sixty days before the time fixed for such meeting, and a general notice, as pro-



vided by said section two, shall be published for nine successive weeks: Provided, That railroad corporations shall not consolidate their stock, property or franchises with any other railroad corporation owning a parallel or competing line.

§ 58. Whereas, a large number of corporations in this State desire to change their names, and in other respects to comply with the terms of this act, whereby an emergency has arisen as a reason why this act should take effect forthwith; therefore, this act shall take effect and be in force from and after its passage.

See § 64, post. Consolidated companies liable for debts of original companies. § 65, post. Trusts and combines prohibited. Ch. 38, §§ 263a et seq.

AN ACT authorizing the changing of the number of directors of incorporated companies in certain cases. [Approved and in force May 22, 1877.]

§ 59. Be it enacted by the people of the State of Illinois, represented in the general assembly: That whenever the stockholders holding a majority of the stock of any corporation existing by virtue of any general or special law of this State, or any corporation hereafter organized by virtue of any law of this State, may desire to change the number of its directors, managers or trustees from an even number to an odd number, they may call a special meeting of the stockholders of such corporation for the purpose of submitting to a vote of the stockholders of such corporation the question of such change of directors, managers or trustees from an even to an odd number: Provided, That the number of directors, managers or trustees shall, in no case, after such change, be less than five nor more than eleven.

See § 3, ante, and cross-references. See § 64, post.

§ 60. Such special meetings shall be called by the president upon the written application of the stockholders of such corporation owning a majority of the stock, by delivering personally, or depositing in the post-office at least thirty days before the time fixed for such meeting, a notice, properly addressed to each stockholder, signed by the president, stating the time, place and object of such meeting. A general notice of the time, place and object of such meeting shall also be published for three successive weeks in some newspaper printed in or nearest to the county in which the principal business office of said corporation is located.

See § 51, ante.

§ 61. At any such meeting, stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each

share of stock held by him, and votes representing a majority of all the stock of the corporation shall be necessary for the purpose of changing the number of the directors, managers or trustees, from an even to an odd number.

Manner of voting, proxies. § 52, ante.

§ 62. If at any regular annual meeting, or at the time and place specified in such notice of a special meeting called for that purpose, said proposition to change the number of directors, managers or trustees from an even to an odd number, be submitted to vote, and if it shall appear that a majority of all the votes represented by the whole stock of such corporation are in favor of such change, a certificate thereof, verified by the affidavit of the president, and under the seal of said corporation, shall be filed in the office of the secretary of State, and a like certificate filed for record in the office of the recorder of deeds of the county wherein the principal office of such corporation is located; and upon the filing of such certificate, the number of directors, managers or trustees shall be, and is hereby declared to be, changed from an even number to an odd number, in accordance with such vote of the stockholders, as aforesaid.

Certificates of votes filed. § 53, ante.

§ 63. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 64. Whereas, a large number of corporations in this State desire to change the number of their directors, managers or trustees from an even number to an odd number, an emergency therefore exists, and this act shall take effect and be in force from and after its passage.

(Approved May 22, 1877.)

See § 58, ante.

#### Consolidation.

AN ACT in relation to the consolidation of incorporated companies. [Approved March 9, 1867; in force May 9, 1867.]

§ 65. Be it enacted by the people of the State of Illinois, represented in the general assembly: That in all cases when any company or corporation, chartered or organized under the laws of this State, shall consolidate its property, stock and franchises with any other company or companies, such consolidated company shall be liable for all debts or liabilities of each company included in said consolidated company, existing or accrued prior to such consolidation, and actions may be brought and maintained, and recovery had therefor, against such consolidated company.

See § 2, ante. Consolidation of railroad companies. § 57, ante.



Foreign corporations; agents and loans — R. S., ch. xxxii, §§ 66, 67.

[Copy of articles of consolidation of two or more corporations, duly authenticated by the secretary of State, is prima facie evidence of the existence of the consolidated company. *E. St. L., etc., Ry. Co. v. Wab., etc., Ry. Co.*, 24 Ill. App. 279.]

Several States may not create corporations by joint acts of legislation, but corporations formed under laws of two or more States may become consolidated, and thereby a new corporation be brought into being, existing under the laws of the several States. *Kincaid v. People*, 139 Ill. 213; s. c., 28 N. E. Rep. 1060. An indictment for burglary is not necessarily defective because it avers that building burglarized was that of a corporation organized under laws of different States. *Id.*

### Corporations Acting by Attorney.

AN ACT to authorize corporations to act by attorney. [Approved and in force February 16, 1865.]

§ 66. Be it enacted by the people of the State of Illinois, represented in the general assembly: That any corporation, subsisting by the laws of other States or countries, may constitute and empower, by letter of attorney, any person or persons to act as its agent, in the State of Illinois, for the performance of such acts and doing such business as such corporation may be authorized to perform and do by the laws of the State of Illinois; and all instruments in writing, whether with or without seal, and all acts and things executed or done by such duly qualified agent, shall have the same force and effect, and be as valid and binding in law, as if executed and done in due process of law, by the corporation for whom such agent may act; and any scrawl or seal written or affixed by such agent, so duly empowered, shall be deemed and considered, in such particular instance, as the corporate seal of the corporation for whom such agent is authorized, as aforesaid, to act: Provided, That this act shall not apply to railroad corporations.

§ 2. This act shall take effect and be in force from and after its passage.  
(Approved February 16, 1865.)

General powers. § 5, ante, notes and cross-references. Powers to be exercised by board of directors. § 6, ante. Agents of foreign corporation subject to liabilities. § 26, ante.

### Loans on Real Estate by Foreign Corporations.

AN ACT to enable corporations in other States and countries to lend money in Illinois, to enforce their securities, and acquire title to real estate as security. [Approved April 9, 1875; in force July 1, 1875.]

§ 67. Be it enacted by the people of the State of Illinois, represented in the general assembly: That any corporation formed under the laws of any other State or country, and authorized by its charter to invest or loan money, may invest or loan money in

this State. And any such corporation that may have invested or lent money as aforesaid, may have the same rights and powers for the recovery thereof, subject to the same penalties for usury, as private persons, citizens of this State; and when a sale is made under any judgment, decree, or power in a mortgage or deed, such corporation may purchase, in its corporate name, the property offered for sale, and become vested with the title wherever a natural person might do so in like cases: Provided, however, That all real estate so purchased by any such corporation, in satisfaction of any such liability or indebtedness, shall be offered at public auction, at least once every year, at the door of the court-house of the county wherein the same may be situated, or on the premises so to be sold, after giving notice thereof for at least four consecutive weeks in some newspaper of general circulation, published in said county, and if there be no such newspaper published therein, then in the nearest adjacent county where such newspaper is published; and said real estate shall be sold whenever the price offered for it is not less than the claim of such corporation, including all interest, costs and other expenses: And, provided, further, That in case such corporation shall not, within such period of five years, sell such lands, either at public or private sale as aforesaid, it shall be the duty of the State's attorney to proceed by information, in the name of the people of the State of Illinois, against such corporation, in the circuit court of the county within which such land so neglected to be sold shall be situated, and such court shall have jurisdiction to hear and determine the fact, and to order the sale of such land or real estate at such time and place, subject to such rules as the court shall establish. The court shall tax, as the fees of the State's attorney, such sum as shall be reasonable; and the proceeds of such sale, after deducting the said fees and costs of proceeding, shall be paid over to said corporation: And, provided, further, That nothing in this act contained shall be so construed as to confer banking powers or privileges upon any such corporation.

See § 5, subd. 3, ante, and cross-references. Requirements of foreign corporations. See Act of 1897, at p. 57.

[Foreign corporations, in absence of law providing for creation of domestic corporations of like character, may do business in this State. *Stevens v. Pratt*, 101 Ill. 206. And may loan money and take mortgage security in this State. *Id.* Legislation in this State has never prohibited such acts. *Id.* But they have no greater powers than domestic corporations formed for same purpose. *Id.* This case affirmed. *Commercial, etc., Co. v. Scammon*, 102 Ill. 46.

This act does not deprive foreign corporations of power to acquire real estate given them by General Incorporation Act. *Buggy Co. v. Graves*, 168 Ill. 459.

Foreign corporation may sue in courts of Illinois. *Bank v. Montgomery*, 3 Ill. 422.]

AN ACT to authorize mining and manufacturing companies to own and hold shares of the capital stock, and to own and hold securities of railroad companies whose road shall connect the different plants of such mining or manufacturing companies with each other, or with other railroads or harbors. [Approved June 21, 1893; in force July 1, 1893. L. 1893, p. 165; Legal News Ed., p. 61; amended by L. 1897.

§ 148. Be it enacted by the people of the State of Illinois, represented in general assembly, That any corporation organized or to be organized under and by virtue of any law of this State, for mining or manufacturing purposes, be and the same is hereby authorized to own and hold shares of the capital stock and to own and hold securities of any railroad company or companies when any such railroad or railroads shall connect the different plants of such mining or manufacturing companies with each other or with other railroads or harbors: Provided, That said mining or manufacturing companies shall not be permitted to hold stock in more than one railroad connecting the same points.

General powers. § 5, ante, notes, and cross-references.

#### Corporations — Dissolution of.

AN ACT providing for the dissolution of corporations in certain cases. [Approved June 17, 1895; in force July 1, 1895. L. 1895, p. 130; Legal News Ed., p. 99.]

§ 149. Be it enacted by the people of the State of Illinois, represented in the general assembly, That whenever the board of directors, managers, trustees or officers of any corporation existing by virtue of any general or special law of this State, or any corporation hereafter organized by virtue of any law of this State, has ceased to do business as a corporation, or has discontinued the exercise of corporate functions, such corporation shall be deemed to have abandoned its corporate franchises and it shall be lawful for the attorney-general to institute proceedings, either in the circuit court of Sangamon county or in the circuit court of such other county in this State as to him may seem best for the dissolution of such corporation.

See ch. 32, § 5, subd. 1, and cross-references. Remedies not affected by dissolution. § 12, ante. Voluntary dissolution. §§ 49a et seq., ante. See note in dissolution, etc., after § 25.

§ 150. Such proceedings shall be commenced by filing in such court an information in the nature of a bill in chancery, stating the name and date of the organization of such corporation, the location of its

principal office and the names of its directors, managers, trustees or officers, if known; that it has ceased to do business as a corporation, and has discontinued the exercise of corporate functions and praying for its dissolution.

§ 151. In proceedings under this act, process in the form of a summons in chancery, may issue out of the court, upon the filing of such information directed to the sheriff of the county in which the principal office of such corporation is, by its charter, located, and shall be served by delivering a copy thereof to the president of such corporation, if he can be found in such county, and if he cannot be found therein, then by leaving such copy with any clerk, secretary, superintendent or other agent of such corporation, and in case the sheriff having such process shall make return thereof that such president, clerk, secretary, superintendent or other agent of such corporation, cannot be found in this county, then the clerk of said court shall cause a notice to be published in some newspaper published in the county where the principal office of such corporation is located, which said notice shall contain a statement of the pendency of the proceeding, the names of the parties thereto, the title of the court and the time and place of the return of such summons, and shall be published at least once in each week for four successive weeks. And no default shall be taken upon such notice unless thirty days shall have intervened between the date of the first publication of such notice and the first day of the term of court at which such default or proceeding is proposed to be taken.

§ 152. It shall not be necessary for the attorney-general to file an affidavit showing such president, clerk, secretary, superintendent or other agent of such corporation resides or has gone out of the State, or on due inquiry cannot be found, or is concealed so that process cannot be served upon them, or that upon diligent inquiry the places of residence of such officers or agents cannot be ascertained.

§ 153. The practice and proceedings under this act shall be the same as in cases of chancery.

§ 154. Suits and proceedings instituted under provisions of this act shall be placed upon a separate docket by themselves, and stand for trial upon the call of such docket at such times during any term of such court as the judge thereof may order.

§ 155. Upon the hearing of the information the court may decree a dissolution of such corporation, and upon notice by the attorney-general in writing of such decree being filed with the secretary of State and entered upon the records of his office, the dissolution of such corporation shall be complete.

Continued after expiration of charter. § 10, ante.

Blacklist, etc.; embezzlement; forgery — R. S., ch. xxxviii, §§ 46, 75, 110, 119.

§ 156. The costs of the court and of publication in proceedings under this act shall be paid out of any moneys in the treasury not otherwise appropriated upon certified fee bills approved by the attorney-general.

## CHAPTER XXXVIII.

### Criminal Code.

#### DIVISION I.

##### Crimes.

##### Conspiracy.

Sec. 46. To do an illegal act; boycott; black-list.

##### Embezzlement.

Sec. 75. By officers of corporation, etc.

##### Forgery and Counterfeiting.

Sec. 110. Proof of corporation.

##### Fraudulent Stock.

Sec. 119. Issuing.

120. Signing with intent to issue.

220. Assuming corporate name.

##### Trusts, Pools, Combines, Etc.

Sec. 269a. Trusts, pools and combines illegal.

269b. Issue of trusts and certificates and organization of combinations prohibited.

269c. Penalties for violation of this act, by persons or corporations.

269d. Penalty for violation of this act by officers or agents.

269e. Declares contracts and agreements in violation of this act void.

269f. Exempts purchasers of commodities, produced or manufactured in violation of this act, from payment.

269g. Fines, how recovered.

269h. Duty of secretary of State, to address letter of inquiry to officer, etc.

269i. Duty of secretary of State when any corporation has entered into any trust.

269j. Prosecution under this act; duties of attorney-general and State's attorney.

##### Trusts and Conspiracies Against Trade.

Sec. 269k. Defines a trust.

269l. Forfeiture of franchise.

269m. Duty of attorney-general to prosecute.

269n. Foreign corporations. Penalties for violation.

269o. Violation of this act declared to be a conspiracy. Penalties.

269p. Form of indictment or information.

269q. Proof of trust or combination.

269r. Contracts and agreements in violation of this act void.

269s. This act shall not apply to farm products in original hands.

269t. Purchasers of commodities from trust not liable for purchase money.

AN ACT to revise the law in relation to criminal jurisprudence. [Approved March 27, 1874; in force July 1, 1874.]

§ 46. If any two or more persons conspire or agree together, or the officers or

executive committee of any society or organization or corporation, shall issue or utter any circular or edict, as the action or instruction to its members, or any other persons, societies, organizations, or corporations, for the purpose of establishing a so-called boycott or black-list, or shall post or distribute any written or printed notice in any place, with the fraudulent or malicious intent wrongfully and wickedly to injure the person, character, business, or employment, or property of another, or to obtain money or other property by false pretenses, or to do any illegal act injurious to the public trade, health, morals, police or administration of public justice, or to prevent competition in the letting of any contract by the State, or the authorities of any counties, city, town or village, or to induce any person not to enter into such competition, or to commit any felony, they shall be deemed guilty of a conspiracy; and every such offender, whether as individuals or as the officers of any society or organization, and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding \$2,000, or both. (As amended by act approved June 16, 1887; in force July 1, 1887. L. 1887, p. 167.)

Employment of labor, etc. Ch. 48, §§ 6 et seq.

§ 75. If any officer, agent, clerk, or servant of any incorporated company; or if a clerk, agent, servant or apprentice of any person or copartnership, or society, embezzles or fraudulently converts to his own use, or takes and secretes with intent so to do, without the consent of his company, employer or master, any property of such company, employer, master, or another, which has come to his possession, or is under his care by virtue of such office or employment, he shall be deemed guilty of larceny.

§ 110. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

See ch. 32, § 27.

§ 119. Every president, cashier, treasurer, secretary or other officer, and every agent, attorney, servant or employe of any bank, railroad, manufacturing or other corporation, and every other person who shall, knowingly and designedly, and with intent to defraud any person, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, transferred, assigned or pledged,

any false, fraudulent or simulated certificate or other evidence of ownership of any share or shares of the capital stock of any bank, railroad, manufacturing or other corporation, shall be punished by fine not exceeding \$2,000 and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

Stock, transfer of. Ch. 32, §§ 7, 8.

[An indictment charged the president and secretary of a corporation with the issue, to the former, of false and fraudulent certificates of the corporate stock generally, but substantially in the language of the statute. (Cohr. Stats., 1891, p. 467, §§ 119-120. Indictment defective. The language would require defendants to answer as to every share of stock ever issued; it is too general to apprise them of the nature and extent of the charge. *West v. People*, 137 Ill. 196; s. c., 27 N. E. Rep. 34; 34 Id. 251.]

In such case, however, count 1 charged that the defendants "knowingly and designedly did issue to him, the said W. (the president), four certain false certificates of ownership, each for the sum of one hundred shares of the capital stock of the C. T. Co., Incorporated," etc. Counts 2 and 3 were the same, except that the words "fraudulent" and "simulated" were used instead of the word "false." Counts 4 and 5 were similar—as to the issue of a certificate for 349 shares of stock. Statement of the offense substantially in the language of the statute (§ 119). Id.]

Three counts of indictment charged a fraudulent issue of four certificates of stock for 100 shares of stock; two counts charged the issue of a certificate for 349 shares; two other counts charged a false issue of certificates for 1,250 shares. The people's evidence did not show an identity of the three separate issues, as to the act, either in time, amount or circumstances. It was error to overrule a motion, made at the close of evidence, that the prosecutor should elect on which charge he would proceed. Id.]

§ 120. Every president, cashier, treasurer, secretary or other officer, and every agent of any bank, railroad, manufacturing or other corporation, who shall willfully and designedly sign, with intent to issue, sell, pledge, or cause to be issued, sold or pledged, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, the signing, issuing, selling or pledging of which by such president, cashier, treasurer or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, or by some amendment thereof, shall be punished by fine not exceeding \$2,000, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

See § 119, ante.

§ 220. If any company, association or person puts forth any sign or advertisement, and therein assumes, for the purpose of soliciting business, a corporate name, not being incorporated, or being incorporated, puts forth any sign or advertisement, as-

suming any other or different name than that by which it is incorporated or authorized by law to act, such company, association or person shall be fined not less than \$10 nor more than \$200, and a like sum for each day he or it shall continue to offend, after having been once fined.

Charter to state corporate name. Ch. 32, § 2.  
Changing name. Ch. 32, §§ 59 et seq.

## Trusts and Combines.

### Pools, Trusts and Combines, Prohibited.

AN ACT to provide for the punishment of persons, copartnerships or corporations forming pools, trusts and combines, and mode of procedure and rules of evidence in such cases. [Approved June 11, 1891; in force July 1, 1891; amended by act approved June 20, 1893, in force July 1, 1893, and by act approved June 10, 1897.]

§ 269a. Be it enacted by the people of the State of Illinois, represented in the general assembly: If any corporation organized under the laws of this or any other State or country, for transacting or conducting any kind of business in this State, or any partnership or individual or other association of persons whosoever, shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person, or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or a party to any pool, agreement, contract, combination or confederation, to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, such corporation, partnership or individual or other association of persons shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to indictment and punishment as provided in this act: Provided, however, That in the mining, manufacture or production of articles of merchandise, the cost of which is mainly made up of wages, it shall not be unlawful for persons, firms or corporations doing business in this State to enter into joint arrangements of any sort, the principal object or effect of which is to maintain or increase wages.

See post, §§ 269k et seq. Consolidation of railroads. Ch. 32, § 57.

§ 269b. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employee, or the directors or stockholders of any corporation to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the

purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of an article of commerce, use or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article.

§ 269c. If a corporation or a company, firm or association shall be found guilty of a violation of this act, it shall be punished by a fine in any sum not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for the first offense; and for the second offense not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000); and for the third offense not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000); and for every subsequent offense and conviction thereof, shall be liable to a fine of fifteen thousand dollars (\$15,000): Provided, That in all cases under this act either party shall have the right of trial by jury.

§ 269d. Any president, manager, director or other officer or agent or receiver of any corporation, company, firm or association, or any member of any company, firm or association, or any individual found guilty of a violation of the first section of this act may be punished by a fine of not less than two hundred dollars (\$200) nor to exceed one thousand dollars (\$1,000), or be punished by confinement in the county jail not to exceed one year, or both, in the discretion of the court before which such conviction may be had.

§ 269e. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

§ 269f. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense in any suit for such price or payment.

§ 269g. The fines hereinbefore provided for may be recovered in an action of debt, in the name of the people of the State of Illinois. If, upon the trial of any cause instituted under this act to recover the penalties as provided for in section three, the jury shall find for the people, and that the defendant has been before convicted of a violation of the provisions of this act, they shall return such finding with their verdict, stating the number of times they find defendant so convicted, and shall assess and return with their verdict the amount of the fine to be imposed upon the defendant in accordance with said section three: Provided, That in all cases under the provisions of this act, a preponderance of evidence in favor of the

people shall be sufficient to authorize a verdict and judgment for the people.

§ 269h. It shall be the duty of the secretary of State, on or about the first day of September of each year, to address to the president, secretary or treasurer of each incorporated company doing business in this State, whose post-office address is known or may be ascertained, a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer, under oath, of the president, secretary or treasurer, or any director of said company. A form of affidavit shall be enclosed in said letter of inquiry, as follows:

#### Affidavit.

State of Illinois,                     )  
County of .....,                     ) ss.:

I, ....., do solemnly swear that I am the ..... (president, secretary, treasurer or director) of the corporation known and styled ....., duly incorporated under the laws of ....., on the ..... of ....., 18.., and now transacting or conducting business in the State of Illinois, and that I am duly authorized to represent said corporation in the making of this affidavit; and I do further solemnly swear that the said ....., known and styled as aforesaid, has not, since the ..... day of ..... (naming the day upon which this act takes effect), created, entered into or become a member of, or a party to, and was not, on the ..... day of ....., nor at any day since that date, and is not now, a member of, or a party to, any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity; and that it has not entered into or become a member of, or a party to, any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State; and that it has not issued and does not own any trust certificates, and for any corporation, officer or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons; corporation or corporations or with any stockholder or director thereof the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price

or lessen the production and sales of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

.....  
[President, Secretary, Treasurer or Director.]

Subscribed and sworn to before me, a ..... within and for the county of ..... this ..... day of ..... 18..

[Seal.] .....

And on refusal to make oath in answer to said inquiry, or of failure to do so within thirty days from the mailing thereof, the secretary of State shall certify that fact to the attorney-general, whose duty it shall be to direct the State's attorney of the county wherein such corporation or corporations are located, and it is hereby made the duty of the State's attorney under the direction of the attorney-general, at the earliest practicable moment, in the name of the people of the State of Illinois, and at the relation of the attorney-general to proceed against such corporation for the recovery of a penalty of fifty dollars for each day after such refusal to make oath, or failure to make said oath within thirty days from the mailing of said notice. Or the attorney-general may, by any proper proceedings in a court of law or chancery, proceed, upon such failure or refusal to forfeit such charter of such incorporated company or association incorporated under the general laws, or by any special law of this State, and to revoke the rights of any foreign corporation located herein to do business in this State.

§ 269i. It shall be the duty of the secretary of State, at any time, upon satisfactory evidence that any company or association of persons, duly incorporated under the laws of this or any other State, doing business in this State, has entered into any trust, combination or association in violation of the preceding section of this act, to demand that it shall make the affidavit, as above set forth in this act, as to the conduct of its business. In case of failure of compliance on the part of the corporation, then the same procedure shall ensue as is provided in section 7a of this act: Provided, That no corporation, firm, association or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this act, or truthfully disclosed in any testimony elicited in the execution thereof. The secretary of State is hereby authorized and required to charge and collect of each corporation a fee of one dollar for receiving and filing the affidavit herein provided for, to be accounted for as other fees received by him: Provided, That corporations organized under the building, loan and homestead association laws of the State are excluded from the provisions of this act.

§ 269j. It shall be the duty of the prosecuting attorneys in their respective jurisdictions, and the attorney-general, to enforce the foregoing provisions of this act, and any prosecuting attorney of any county, securing a conviction under the provisions of this act, shall be entitled to such fee or salary as by law he is allowed for such prosecution. When there is a conviction under this act, the informer shall be entitled to one-fifth of the fine recovered, which shall be paid him when the same is collected. All fines recovered under the provisions of this act shall be paid into the county treasury of the county in which the suit is tried, by the person collecting the same, in the manner now provided by law, to be used for county purposes.

[An association formed for the purpose of regulating the price of milk sold by members thereof in a particular city to retail dealers, which purpose was carried out by a concurrent action of members of the association, is within act prohibiting trusts and combinations. *Ford v. Milk Assn.*, 155 Ill. 166; s. c., 39 N. E. Rep. 651.]

Above act applies to a corporation formed previous to its passage. *Id.*

A combination to control the manufacture and sale of all distillery products, so as to stifle competition and dictate amounts manufactured and selling prices, is an illegal attempt to create a monopoly. *Distilling Co. v. People*, 156 Ill. 448; s. c., 41 N. E. Rep. 188.]

AN ACT to define trusts and conspiracies against trade, declaring contracts in violation of the provisions of this act void, and making certain acts in violation thereof misdemeanors, and prescribing the punishment therefor and matters connected therewith. [Approved June 20, 1893.]

§ 269k. Be it enacted by the people of the State of Illinois, represented in the general assembly, That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of two or more of them for either, any or all of the following purposes:

First. To create or carry out restrictions in trade.

Second. To limit or reduce the production, or increase or reduce the price of merchandise or commodities.

Third. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities.

Fourth. To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established upon any article or commodity of merchandise, produce or manufacture intended for sale, use or consumption in this State; or to establish any pretended agency whereby the sale of any such article or commodity shall be covered up and made to appear to be for the original vendor, for a like purpose or purposes, and to enable such original vendor or manufacturer to control the whole-sale or retail price of any such article or

commodity after the title to such article or commodity shall have passed from such vendor or manufacturer.

Fifth. To make or enter into, or examine or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or card or list price, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

§ 269l. That any corporation holding a charter under the laws of this State which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

§ 269m. For a violation of any of the provisions of this act by any corporation mentioned herein it shall be the duty of the attorney-general or prosecuting attorney, upon his own motion to institute suit or quo warranto proceedings at any county in this State (in) which such corporation exists, does business, or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

§ 269n. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this State, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings, in any county in which such foreign corporation does business, in the name of the State on his relation.

§ 269o. Any violation of either or all of the provisions of section 1 of this act (§ 269k) shall be and is hereby declared to be a conspiracy against trade, and a misdemeanor; and any person who may be or may become engaged in any such conspiracy or take part therein or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant, or employee, or in any other capacity knowingly carry out any of the stipulations, purposes, prices, rates, orders thereunder or in pursuance thereof shall be punished by fine not less than two thousand dollars nor more than five thousand dollars.

§ 269p. In any indictment or information

for any offense named in this act it is sufficient to state the purposes and effects of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how or where it was created.

§ 269q. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all.

§ 269r. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 269s. The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser.

§ 269t. Any purchaser of any article or commodity, from any person, firm, corporation or association of persons, or of two or more of them, transacting business contrary to any provision of the preceding sections of this act, shall not be liable for the price or payment of such article or commodity and may plead this act as a defense to any suit for such price or payment.

See ante, §§ 269a et seq.

## CHAPTER XLVIII.

### Employment.

#### Truck System.

- Sec. 6. Truck stores prohibited.  
 7. Penalties for violation of this act.  
 8. Deductions from wages prohibited.  
 9. Recovery of deductions.  
 10. Evasion or avoidance of this act; penalties.  
 11. Farmers, laborers and servants excepted.  
 12. The term "truck" defined.

#### Weekly Payment by Corporations.

- Sec. 13. Corporations named therein shall pay their employes weekly.  
 14. Penalties; actions, where brought; notice; assignment; agreement.  
 15. Recovery of penalties.

#### Child Labor.

- Sec. 16. Unlawful under thirteen years of age.  
 17. When board of education, etc., may authorize employment.  
 18. When certificate may be granted.  
 19. Not to be employed without certificate.  
 20. Penalty.

AN ACT to provide for the payment of wages in lawful money, and to prohibit the truck system, and to prevent deductions from wages except for lawful money actually advanced. [Approved May 28, 1911; enforced July 1, 1891. L. 1891, p. 212; Legal News Ed., p. 80.]

§ 6. Be it enacted by the people of the State of Illinois, represented in the general assem-

bly, That it shall be unlawful for any person, company, corporation or association, now engaged or hereafter to be engaged in any mining or manufacturing business in this State, to engage in, or be interested in, directly or indirectly, in keeping of a truck store, or controlling of any store, shop or scheme for the furnishing of supplies, tools, clothing, provisions or groceries to his, its or their employes while so engaged in mining or manufacturing.

§ 7. Every person, company, corporation or association found guilty of violating section one (1)\* of this act, either by himself, its or their agents, servants or employes, or partners, shall be guilty of a misdemeanor for each and every day such business is done in violation of said section, and on conviction will be liable to a fine for each offense of not less than fifty (\$50) nor more than two hundred (\$200) dollars, to be recovered in the name of the people, for the use of the school fund, and any person having knowledge of the fact that said section has been violated may make complaint, and cause summons or warrant to be issued.

§ 8. It shall be unlawful for any person, company, corporation or association, employing workmen in this State, to make deductions from the wages of his, its or their workmen, except for lawful money, checks or drafts actually advanced without discount, and except such sums as may be agreed upon between employer and employe, which may be deducted for hospital or relief fund for sick or injured employes.

§ 9. Any deductions made from the wages of any workman in this State, except as provided in section three (3)\* of this act, may be recovered in any appropriate action before any court of competent jurisdiction, together with such reasonable attorney's fee as the court in its discretion shall think proper, and no offset or counterclaim of any kind shall be allowed in such action or proceeding.

§ 10. All attempts to evade or avoid the provisions of this act, by contract or otherwise, shall be deemed a violation thereof, and for every violation, in addition to the civil remedy provided for in section four (4),\* there shall, on conviction, be a fine imposed of not less than fifty (\$50) nor more than two hundred (\$200) dollars for each offense.

§ 11. Nothing in this act shall be so construed as to include the business of farmers, or farm laborers, or servants.

§ 12. "Truck" means the payment of wages otherwise than in lawful money, or otherwise than to the full amount earned by the employe.

AN ACT to provide for the weekly payment of wages by corporations. [Approved April 23, 1891; in force July 1, 1891.]

§ 13. Be it enacted by the people of the State of Illinois, represented in the general assembly, That every manufacturing, mining, quarrying, lumbering, mercantile, street, electric and elevated railway, steamboat, telegraph, telephone, and municipal corporation, and every incorporated express company and water company, shall pay weekly each and every employe engaged in its business, the wages earned by such employe to within six days of the date of such payment: Provided, however, That if at any time of payment any employe shall be absent from his regular place of labor he shall be entitled to said payment at any time thereafter upon demand.

§ 14. Any corporation violating any of the provisions of this act shall be liable to a penalty not exceeding fifty dollars, and not less than ten dollars for each violation, to be paid to the people of the State, and which may be recovered in a civil action; Provided, an action for such violation is commenced within thirty days from the date thereof; any person may bring an action in the name of the People of the State, as plaintiff, against any corporation which neglects to comply with the provisions of this act for a period of two weeks, after having been notified in writing by such person that such action will be brought. On the trial of such action, such corporation shall not be allowed to set up any defense for a failure to pay weekly any employe engaged in its business the wages earned by such employe to within six days of the date of such payment, other than a valid assignment of such wages, or a valid set-off against the same, or the absence of such employe from his regular place of labor at the time of payment, or an actual tender to such employe at the time of payment of the wages so earned by him, or a breach of contract by such employe or a denial of the employment. No assignment of future wages payable weekly under the provisions of this act shall be valid if made to the corporation from whom such wages are to become due, or to any person on behalf of such corporation, or if made or procured to be made to any person for the purpose of relieving such corporation from the obligations to pay weekly under the provisions of this act. Nor shall any of said corporations require any agreement from any employe to accept wages at other periods than as provided in section 1\* of this act, as a condition of employment.

§ 15. The penalties herein provided may be recovered in any court having civil juris-

\*§ 8 or § 9. Weekly payment of wages. §§ 13-15, post.

\*§§ 6 and 13.



Child labor — R. S., ch. xlviii, §§ 16-20; Evidence — R. S., ch. li, §§ 15, 16.

diction by such in the name of the person bringing the same.

[Approved April 23, 1891.]

Truck stores prohibited, etc. §§ 6-12, ante.

[Act of 1891, requiring the weekly payment of wages, declared unconstitutional. *Coal Co. v. People*, 147 Ill. 66; s. c., 35 N. E. Rep. 62.]

AN ACT to prevent child labor. [Approved July 17, 1891. L. 1891, p. 87; Legal News Ed., p. 139.]

§ 16. Be it enacted by the people of the State of Illinois, represented in general assembly, That it shall be unlawful for any person, firm or corporation to employ or hire any child under thirteen years of age except as hereinafter provided.

See §§ 6 et seq., ante.

§ 17. In case it shall be made to appear to the board of education or of school directors that the labor or services of any child constitutes and is the means of support of any aged or infirm relative, and that such relative is in whole, or in part, dependent upon such child, then the board of education or school directors shall issue to such child a certificate authorizing the employment of such child; such certificate shall state the name, residence and age of such child, and a record thereof shall be kept by the board of education or school directors in a book kept for that purpose.

§ 18. No such certificate shall be granted to any child unless it shall be shown to the board of education or school directors, in which such child resides, that such child has attended some public or private day school for at least eight (8) weeks in the current school year.

§ 19. No person, firm or corporation shall employ any child under the age of thirteen years, in any store, shop, factory or manufacturing establishment, by the day or any period of time greater than one day, unless such certificate be furnished, nor shall he permit any such child to work in his employment without such certificate. He or they shall be authorized to retain the certificate of any such child employed by him, which shall be evidence admissible in any court.

§ 20. Any person, firm or corporation who violates the provisions of this act and any father, guardian, or person having control of any child under the age of thirteen (13) years, who willingly permits or consents to the employment of such child without such certificate as is prescribed by section 3\* of this act, shall, for every offense, be fined in a sum not less than ten nor more than fifty dollars, for the use of public schools of the city or district in which such child resides.

And every day of the employment of any such child shall be deemed a separate offense.

Is not this act repealed by Act of June 9, 1897? See p. 58.

## CHAPTER LI.

### Evidence and Depositions.

Sec. 15. Records, etc., of private corporations; how certified.

16. Form of certificate.

AN ACT in regard to evidence and deposition in civil cases. [Approved March 29, 1872; in force July 1, 1872. L. 1871-2, p. 495.]

§ 15. The papers, entries and records of any corporation or incorporated association may be proved by a copy thereof, certified under the hand of the secretary, clerk, cashier or other keeper of the same. If the corporation or incorporated association has a seal, the same shall be affixed to such certificate.

See ch. 32, § 5, subd. 2. Directors to keep record of all business. Ch. 32, § 13.

[Secondary evidence of books and papers of a corporation is inadmissible in its behalf, where the original are under its control. *Mandel v. L. C. Co.*, 154 Ill. 177; s. c., 40 N. E. Rep. 462. Records of corporation are admissible in evidence to show that a call upon the stock has been made. *Mandel v. L. & C. Co.*, 51 Ill. App. 205.]

§ 16. The certificate of any such clerk of a court, city, village, town, county, or secretary, clerk, cashier, or other keeper of any such papers, entries, records or ordinances, shall contain a statement that such person is the keeper of the same, and if there is no seal, shall so state.

[Failure of certificate so to state, renders papers inadmissible. *Thompson v. Mason*, 4 Ill. App. 452. Naming corporations by initials in clerk's certificate is not valid objection, where meaning of initials is proved aliunde, or by other parts of the certificate. *Phillips v. Webster*, 85 Ill. 146.]

## CHAPTER LXXIV.

### Interest.

Sec. 8. Rate in contracts.

11. Corporation not to plead usury.

AN ACT to revise the law in relation to the rate of interest, and to repeal certain acts therein named. [Approved May 24, 1879; in force July 1, 1879. Legal News Ed., p. 144.]

§ 8. When any written contract, wherever payable, shall be made in this State, or between citizens or corporations of this State, or a citizen or corporation of this State and a citizen or corporation of any other State, territory or country (or shall be secured by mortgage or trust deed on

lands in this State), such contract may bear any rate of interest allowed by law, to be taken or contracted for by persons or corporations in this State or which is or which may be allowed by law on any contract for money due or owing in this State: Provided, however, That such rate of interest shall not exceed seven per cent. per annum. And if any such person or corporation shall contract to receive a greater rate of interest or discount than seven per cent., upon any such contract, such person or corporation shall forfeit the whole of said interest so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation.

See ch. 32, § 5, subd. 4.

§ 11. No corporation shall hereafter interpose the defense of usury in any action.

See ch. 32, § 5, subd. 4.

[Above section construed. *Bank v. Ry. Co.*, 145 Ill. 208; s. c., 34 N. E. Rep. 135.

Statutory provision that a corporation shall not interpose the defense of usury will not prevent a corporation or its stockholders from obtaining relief against a usurious contract, when one or more of its managers voting to make the contract had a personal interest therein. *Higgins v. Lansingh*, 151 Ill. 301; s. c., 40 N. E. Rep. 362.

Above section applies to insurance companies. *Ins. Co. v. Hadden*, 28 Ill. 260. Agreement by corporation to pay eighteen per cent., binding in absence of fraud. *Hurd v. Marple*, 2 Ill. App. 402. Corporation held to be prohibited to plead usury. *R. R. Co. v. Mills*, 52 Ill. 174.]

## CHAPTER LXXVII.

### Judgments, Decrees, and Executions.

Sec. 52. Stock may be sold on execution.

53. Mode of levy.

54. Mode of sale.

55. Certificate of officer; refusal, etc.; penalty.

56. Further proceedings.

57. Rights of purchasers.

AN ACT in regard to judgments and decrees and the manner of enforcing the same by execution. [As amended by act approved June 22, 1883; in force July 1, 1883. L. 1883, p. 110; Legal News Ed., p. 92.]

§ 52. The share or interest of a stockholder in any corporation may be taken on execution, and sold as hereafter provided; but in all cases, where such share or interest has been sold or pledged in good faith for a valuable consideration, and the certificate thereof has been delivered upon such sale or pledge such shares or interest shall not be liable to be taken on execution against the vendor, or pledgor, except for the excess of the value thereof over and above the sum for which the same may have been pledged and the certificate thereof delivered.

See ch. 32, § 5, subd. 1, and cross-references. Transfer of stock, liability of stockholder. Ch. 32, § 8.

[Statute must be strictly followed. *Goss, etc., Co. v. People*, 4 Ill. App. 510.

Shares of stock are not subject to attachment. *Rhea v. Powell*, 24 Ill. App. 77. But see contra, *Bank v. Byram*, 131 Ill. 97; s. c., 22 N. E. Rep. 842; *Thompson v. Wells*, 57 Ill. App. 436.

Shares of stock which are liable to be taken on execution are subject also to be taken on attachment. *Thompson v. Wells*, 57 Ill. App. 436.

Shares of stock in a corporation can be attached or sold on execution only in the State creating such corporation. *Reid v. Stephens*, 62 Ill. App. 331.]

§ 53. If the property has not been attached in the same suit, the officer shall leave an attested copy of the execution with the clerk, treasurer or cashier of the company, if there is any such officer, otherwise with any officer or person having the custody (of) the books and papers of the corporation; and the property shall be considered as seized on execution when the copy is so left, and shall be sold in like manner as goods and chattels.

[Shares of stock in a corporation are subject to attachment. If such shares have been attached in the suit in which the execution issued, the purchaser at sheriff's sale will be entitled to all dividends accruing after attachment. *Bank v. Byram*, 131 Ill. 97; s. c., 22 N. E. Rep. 842.

The shares may be levied on by leaving an attested copy of the writ with the officer of the corporation in charge of the records. *Id.* The attested copy of the execution is not required to be left with such officer if the stock has been already attached in the suit. *Id.*

Shares of stock, owned by a defendant in attachment, for which a certificate has not been issued, may be reached, by garnishment, in the hand of the corporation. *Storage B. Co. v. Long*, 41 Ill. App. 335.

Proceedings by garnishment will not lie on the part of creditors of a corporation to recover the unpaid balance on shares of stock, as payment in full was less than the face value thereof. *Sang C. M. Co. v. Richardson*, 33 Ill. App. 280.]

§ 54. If the share is already attached in the same suit, the officer shall proceed in seizing and selling it on the execution, in the same manner as in selling goods and chattels.

§ 55. The officer of the company who keeps a record or account of the shares or interest of the stockholders therein, shall, upon the exhibiting to him of the execution, be bound to give a certificate of the number of shares or amount of the interest held by the judgment debtor. If he refuses to do so, or if he willfully gives a false certificate thereof, he shall be liable for double the amount of all damages occasioned by such refusal or false certificate, to be recovered in any proper action, unless the judgment is satisfied by the original defendant.

[Before officer of corporation can be legally compelled to furnish officer such certificate, he may require not only exhibition to him of execution, but also delivery to him of attested copy thereof. *People v. Mfg. Co.*, 99 Ill. 355.

It is the object of section 55, chapter 77, Revised Statutes, to require official having charge of records of corporation, against which process is issued, to disclose shares or interest of stockholders in corporation in order to enable the sheriff to individually levy his writ, such shares

Service of summons; practice — R. S., ch. lxxix, § 23; ch. cx, § 5.

and interests being subject to attachment and execution. *Thompson v. Wells*, 57 Ill. 436.]

§ 56. An attested copy of the execution and of the return thereon shall, within fifteen days after the sale, be left with the officer of the company whose duty it is to record transfers of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him upon paying the fees therefor and for recording the transfer.

See ch. 32, § 3, and cross-references.

[Title to stock can only pass, as against judgment creditor, by transfer on books. §§ 52-56, cited. *Bank v. Gridley*, 91 Ill. 457. Between vendor and vendee, no entry on books is necessary. *Id.* Such shares not mere securities for money. *Campbell v. Morgan*, 4 Ill. App. 100.]

§ 57. If the shares or interest of the judgment debtor had been attached in the suit in which execution issued, the purchaser shall be entitled to all the dividends which have accrued after the attachment.

## CHAPTER LXXIX.

### Justices and Constables.

#### Summons.

Sec. 23. Service on corporations.

AN ACT to revise the law in relation to justices of the peace and constables. [Approved June 26, 1895; in force July 1, 1895, p. 182.]

§ 23. An incorporated company may be served by leaving a copy of the summons with its president, secretary, superintendent, general agent, cashier or principal clerk, if either can be found in the county in which the action is brought; if neither shall be found in the county, then by leaving a copy of the summons with any director, clerk, engineer, conductor, station agent, or any agent of such company found in the county.

See ch. 32, § 5, subd. 1, and cross-references. Corporation acting by attorney. Ch. 32, § 66. Service on corporation. Ch. 110, §§ 5-11.

[General solicitor of a corporation is not a person named in the statute providing for service of process upon corporations, and an officer making service upon him must take the responsibility of saying whether or not he is an agent of the corporation. *R. R. Co. v. Man. Co.*, 55 Ill. App. 231.

Service on any agent of company sufficient in absence of officers designated. *R. R. Co. v. Tel. Co.*, 22 Ill. 333.

Return that summons was served by reading to company, fails to show statutory service and confers no jurisdiction. *Mining Co. v. Schirmer*, 64 Ill. 106.

Copy of summons must be left either with president, secretary, etc., or with certain other officers named. The former class is primary, and service on latter is good only when failure to serve on the former is accounted for satisfactorily. *R. R. Co. v. Dawson*, 3 Ill. App. 118.]

## CHAPTER CX.

### Practice.

Sec. 5. Service on corporations.

7a. Receiver of corporations, how served.

11. Process in mandamus and quo warranto.

AN ACT in regard to practice in courts of record. [Approved February 22, 1872.]

§ 5. An incorporated company may be served with process by leaving a copy thereof with its president if he can be found in the county in which the suit is brought, if he shall not be found in the county, then by leaving a copy of the process with any clerk, secretary, superintendent, general agent, cashier, principal, director, engineer, conductor, station agent or any agent of said company found in the county, and in case the proper officer shall make return upon such process that he cannot in his county find any clerk, secretary, superintendent, general agent, cashier, principal, director, engineer, conductor, station agent or any other agent of said company, then such company may be notified by publication and mail in like manner and with like effect, as is provided in sections twelve (12) and thirteen (13) of an act entitled "An act to regulate the practice in courts of chancery," approved March 15, 1872. (As amended by act approved May 29, 1877; in force July 1, 1877. Laws of 1877, p. 147.)

See ch. 32, § 5, subd. 1, and cross-references. Service on corporation. Ch. 79, § 23.

[Legislature has power to regulate the practice concerning service of summons on corporations. *Acc. Assn. v. Riel*, 38 Ill. App. 425.

Jurisdiction of, is not had by service of summons on a director who is a plaintiff. *St. L., etc., Co. v. S. C. & M. Co.*, 111 Ill. 38; *Mining Co. v. Edwards*, 103 id. 472.

Return on summons served, etc., "E. N. K., director and treasurer of said company, the president of said company not found in my county," dated, is good. *Chicago, etc., Co. v. Cong., etc., Co.*, 111 Ill. 312.

Return of process, unable to find president in county; due organization and representation by president and that he was a resident at the time of issue and service does not put the return in issue. *Id.*

Defendant corporation may plead in abatement to service of process, by contradicting sheriff's return. *Id.*

Service of summons on a non-resident corporation cannot be had by leaving a copy thereof with a director found in the county wherein suit is brought, if such director is there on his private affairs and not on corporate business. *Shlsbee v. Hotel Co.*, 30 Ill. App. 206.

A mere casual offer to receive a proposition relating to the business of a corporation is not the transaction of business by an agent, authorizing the conclusion that the company is transacting its business in this State. *R. R. Co. v. Hook*, 40 Ill. App. 556.

To be found within the State a foreign corporation must have sent its agents on whom service is made, to the State to conduct its business therein, either continuously or for a time, so as to complete a transaction or enterprise, or, at least, charged with the duty of contracting or negotiating within the State for the company. *Id.*

Practice: quo warranto — R. S., ch. ex, §§ 7a, 11; ch. cxii, § 1.

Service of a writ upon a corporation by delivering a copy to vice-president is bad. *Building Assn. v. Cook*, 46 Ill. App. 279.

Service on corporations by publication. *Coal Co. v. Hughes*, 45 Ill. App. 566.

Above section applies to foreign corporations. *Hannibal, et al., Co. v. Crane*, 102 Ill. 239; *Penn. Co. v. Sloan*, 1 Id. 394. But not to foreign corporations having no office or agent here, whose office is only temporarily in the State. *R. R. Co. v. McDermid*, 91 Ill. 170. Where foreign corporation has no office here, service on its agents, of limited powers, insufficient. *Union Pac. Co. v. Miller*, 87 Ill. 45.

Service on general agent in this State of corporation would seem to be sufficient. *Clarkson v. Dispatch*, 6 Ill. App. 284. Foreign insurance company may be served with process under above section. *Johnson v. Ins. Co.*, 11 Biss. 452.

Foreign corporation doing business in Illinois may be sued here in Federal court, though no specific form of service is provided by statute. *Packing Co. v. Hunter*, 8 Biss. 429.

Under above section, service on corporation must be by delivering a copy to proper person, not by sending. *R. R. Co. v. Joiner*, 72 Ill. 520.

Defective service on corporation is cured by appearance. *Bills v. Stanton*, 69 Ill. 51. Even though defendant is a foreign corporation. *Clarkson v. Dispatch*, 6 Ill. App. 284.

Return of service on officer other than president must state that latter cannot be found. *Mill Co. v. Bank*, 86 Ill. 587.

Return that president was not found in city of A. insufficient; should be, not found in county. *Ins. Co. v. Abens*, 3 Ill. App. 488.

Service on A. B. "as president," or "as secretary," is insufficient. It must state he is president or secretary. *Tel. Co. v. Kennedy*, 24 Ill. 319; *Mill Co. v. Bank*, 86 Id. 587.

An Illinois insurance company, by taking a risk in Wisconsin, voluntarily submits itself to the laws of that State as to service of process upon foreign corporations. *Ins. Co. v. Thompson*, 155 Ill. 204; 8 C. C. 40 N. E. Rep. 488.

Judgment of another State against a domestic corporation, upon service made upon one declared by statute of such State to be an agent of such corporation will be enforced in Illinois, where such corporation has voluntarily transacted business in such other State in such manner as to bring itself within its jurisdiction. *Id.*

§ 7a. That the receiver or receivers of any incorporated company may be served with process by leaving a copy of such process with such receiver or receivers, if he or they can be found in the county in which the suit is brought; if he or they shall not be found in the county, then by leaving a copy of such process with any clerk, secretary, superintendent, general agent, engineer, conductor, station agent, or any agent in the employ of such receiver or receivers who may be found in the county in which such suit is brought. (As amended by act approved and in force May 3, 1889. L. 1889, p. 98.)

See ch. 32, § 25.

§ 11. It shall not be necessary hereafter, in any action of mandamus or quo warranto, to set out the cause of the action in the writ, but it shall be sufficient to summon the defendant in a summons in the usual form, commanding the defendant to appear and answer the plaintiff in an action of mandamus or quo warranto, as the case may be, and the issues shall be made up by

answering, pleading or demurring to the petition as in other cases.

Quo warranto. See ch. 112.

## CHAPTER CXII.

### Quo Warranto.

- Sec. 1. When and at whose instance writ may issue.
2. Summons — when returnable.
3. Service of summons — by copy of information.
4. Defendant served must plead, etc.— default.
5. Time to plead, etc.
6. Judgment.
7. Appeal — error.

AN ACT to revise one law in relation to quo warranto. [Approved March 23, 1874.]

Section 1. Be it enacted by the people of the State of Illinois, represented in general assembly, That in case any person shall usurp, intrude into, or unlawfully hold or execute any office or franchise, or any office in any corporation created by authority of this State, (or any person shall hold or claim to hold or exercise any privilege, exemption or license, which has been improperly or without warrant of law issued or granted by any officer, board, commissioner, court, or other person or persons authorized or empowered by law to grant or issue such privilege, exemption or license,) or any public officer shall have done, or suffered any act which, by the provisions of law, works a forfeiture of his office, or any association or number of persons shall act within this State as a corporation without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises powers not conferred by law, or if any railroad company doing business in this State, shall charge an extortionate rate for the transportation of any freight or passenger, or shall make any unjust discrimination in the rate of freight or passenger tariff over or upon its railroad, the attorney-general or State's attorney of the proper county, either of his own accord or at the instance of any individual relator, may present a petition to any court of record of competent jurisdiction, or any judge thereof in vacation, for leave to file an information in the nature of a quo warranto in the name of the people of the State of Illinois, and if such court or judge shall be satisfied that there is probable ground for the proceeding, the court or judge may grant the petition, and order the information to be filed and process to issue. When it appears to the court or judge that the several rights of divers parties to the same office or franchise, privilege, exemption or license, may properly be determined on one (1) information, the court or judge may give leave to join all of such persons in the same information, in order to try their respective rights

## Quo warranto — R. S., ch. cxii, §§ 1-7.

to such office, franchise, privilege, exemption or license.

Forfeiture of charter for not organizing. Const., art. XI, § 2. Dissolution of corporation. Ch. 32, § 149.

[Where corporation does no private injury, and commits no offense against the public alone, the State may either punish or waive the right to do so. *People v. R. R. Co.*, 54 Ill. App. 349.

Franchise may be forfeited and corporation dissolved through non-user or abuse of the franchise. *E. C. Inst. v. People*, 112 Ill. 363; s. c., 32 N. E. Rep. 494.

Individuals acting as a corporation, limiting their liability and assuming perpetuity, will be liable to judgment of ouster. *Greene v. People*, 150 Ill. 513; s. c., 37 N. E. Rep. 842.

An injunction lies in a suit on behalf of the people by the attorney-general to restrain a corporation from doing illegal acts and exceeding its powers in an unlawful direction. *Chicago v. People*, 60 Ill. App. 488.

Corporation exceeding its powers; election of remedies by the attorney-general. Id.

Failure of a banking corporation to transact business for fifteen years held ground for a judgment of ouster. *Henderson Loan & Real Estate Assn. v. People*, 45 N. E. Rep. 141.

Where by quo warranto a purchaser of the franchises of another company is absolutely barred from exercising the privileges dependent thereon, it could not transfer any right acquired by such company. *Wilmington W. P. Co. v. Evans*, 46 N. E. Rep. 1083.]

§ 2. On the filing of such information, the clerk of the court shall issue a summons in like form as other summons, commanding the defendant to appear at the return term thereof, to answer the relator in an information in the nature of a quo warranto. If the information is filed in vacation, the summons shall be made returnable on the first day of the next succeeding term; if in term time, it may be made returnable on any day of the same term, not less than five days after the date of the writ, as shall be directed by the court.

See ch. 32, § 5, subd. 1, and cross-references.

§ 3. The summons may be served in the same manner as other summons in suits at law, but if any defendant resides or is out of the State, he may be served with a copy of the information in the same manner and with like effect, and the service may be proved in the same way as provided in the case of bills in chancery.

Service of summons. Ch. 79, § 33.

§ 4. Every defendant who shall be summoned or served with a copy of the information as required in this act, shall be held to demur or plead to the information on the return day of the summons, or when served with a copy of the information at the expiration of the time required to be given, or within such further time as may be granted by the court, or in default thereof, judgment may be taken *nil dicit*.

§ 5. The court in which any information, as aforesaid, is filed, may allow the relator or any defendant such convenient time to plead, reply or demur, as it shall deem just and reasonable.

[Pleadings in quo warranto should conform, as far as possible, to general principles and rules which govern civil actions. *Distilling Co. v. People*, 156 Ill. 448; s. c., 41 N. E. Rep. 188.]

§ 6. In case any person or corporation against whom any such information is filed is adjudged guilty, as charged in the information, the court may give judgment of ouster against such person or corporation from the office or franchise, and fine such person or corporation for usurping, intruding into, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecution: Provided, That instead of judgment of ouster from a franchise for an abuse thereof, unless the court is of the opinion that the public good demands such judgment, the court may fine the person or corporation found guilty in any sum not exceeding \$25,000 for each offense. Whenever judgment is given for any defendant in such information, the person or corporation to whom judgment is given shall recover costs against the relator.

§ 7. Appeals and writs of error may be taken and prosecuted in the same manner and upon the same terms, and with like effect as in other civil cases.

[Review of information on appeal. *Distilling Co. v. People*, 156 Ill. 448; s. c., 41 N. E. Rep. 188.]

## CHAPTER CXX.

## Revenue.

- Sec. 1. What property assessed and taxed.  
3. Rules for valuing personal property.  
6. Who shall list and what listed.

**Where Listed and Assessed and What  
Held to be Personal Property — Manner  
of Listing.**

- Sec. 7. Where personal property listed.  
13. Personal property of banks and others not specially provided for.  
14. Gas and coke companies.  
15. Personal property of street railroads, toll roads, etc.  
16. Of stage companies.  
17. Of express companies, etc.  
20. Interest on bonds.  
26. Assessors may examine under oath — refusal to answer — perjury.

## Rules for Listing Credit.

- Sec. 27. What debts deducted from credits.  
28. What debts not deducted.  
30. Listing and valuing property of banks, etc.

### Listing Capital Stock of Corporations and Franchises of Persons.

- Sec. 32. Rules for listing capital stock of corporations — sworn statement.  
 33. Schedules returned, etc.  
 34. Franchise to be listed and valued.

AN ACT for the assessment of property and for the levy and collection of taxes. [Approved March 30, 1872; in force July 1, 1872.]

Section 1. Be it enacted by the people of the State of Illinois, represented in general assembly, That the property named in this section shall be assessed and taxed, except so much thereof as may be, in this act, exempted:

Second. All moneys, credits, bonds or stocks and other investments, the shares of stock of incorporated companies and associations, and all other personal property including property in transitu to or from this State, used, held, owned or controlled by persons, residing in this State.

Third. The shares of capital stock of banks and banking companies doing business in this State.

Fourth. The capital stock of companies and associations incorporated under the laws of this State.

See Const., art. IX, § 1. Interest on bonds. § 20, post.

[The constitutional rule of uniformity of taxation applies to the class, not to all corporations alike. *Coal R. C. Co. v. Finlen*, 124 Ill. 668; s. c., 17 N. E. Rep. 11; *Gas Co. v. Higby*, 134 Ill. 562; s. c., 25 N. E. Rep. 560; *R. R. Co. v. Donoghue*, 127 Ill. 29; s. c., 18 N. E. Rep. 827.

Legislature is not prohibited from providing different modes for determining the value of capital stock, including the franchise of railway, mining and manufacturing companies. *Coal R. C. Co. v. Finlen*, supra.

Capital stock is ordinarily to be listed at place of principal office of corporation, if it has such office in the State. *G. T. & C. Co. v. People*, 138 Ill. 336; s. c., 27 N. E. Rep. 924.]

§ 3. Personal property shall be valued as follows:

\* \* \* \* \*

Fourth. The capital stock of all companies and associations now or hereafter created under the laws of this State except those required to be assessed by the local assessors, as hereinafter provided shall be so valued by the State board of equalization as to ascertain and determine respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association; such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock, as to it may seem equitable and just, and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject however, to such

change, alteration or amendment as may be found from time to time, to be necessary by said board: Provided, That in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of such company or association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock, or shares of capital stock of banks organized under the general banking laws of this State or under any special charter heretofore granted by the legislature of this State: Provided, further, That companies and associations organized for purely manufacturing purposes or for the mining and sale of coal, or printing or for publishing of newspapers or for the improving and breeding of stock, shall be assessed by the local assessors in like manner as the property of individuals is required to be assessed. (As amended by act approved and in force June 19, 1893.)

Shares of stock deemed personal property. Ch. 32, § 7. Personal property of banks. § 13, post. Same of certain companies. §§ 14-17, post. Franchises to be listed as personal property. § 34, post.

[That the capital stock of some corporations is not assessed by State board of equalization is no ground of relief to companies whose stock has been so assessed. *Coal R. C. Co. v. Finlen*, 124 Ill. 668; s. c., 17 N. E. Rep. 11.

Provision of revenue law for the assessment of capital stock of some corporations by local assessors and of others by State board of equalization is not unconstitutional. Id.

Equity will not interfere with the assessment of capital stock by the State board of equalization, in the absence of fraud in making it. Id.]

§ 6. Personal property shall be listed in the manner following:

First. Every person of full age and sound mind, being a resident of this State, shall list all his moneys, credits, bonds or stocks, shares of stock of joint-stock or other companies (when the capital stock of such company is not assessed in this State), \* \* \*

and other personal property.

Seventh. The property of corporations whose assets are in the hands of receivers, by such receivers.

Eighth. The property of a body politic or corporate, by the president, or proper agent or officer thereof.

Rules for listing. §§ 27-30, post. Listing capital stock of corporations. §§ 32-34, post.

§ 7. \* \* \* The capital stock and franchises of corporations and persons, except as may be otherwise provided, shall be listed and taxed in the county, town, district, city or village where the principal office or place of business of such corporation or person is located in this State. If there be no principal office or place of business in this State, then at the place in this State where any

such corporation or person transacts business.

See § 3, ante.

§ 13. The personal property of banks or bankers, \* \* \* insurance companies, \* \* \* mining companies, and companies not specially provided for in this act, shall be listed and assessed in the county, town, city, village or district where their business is carried on, except such property as shall be liable to assessment elsewhere, in the hands of agents. All persons, companies and corporations in this State owning steamboats, sailing vessels, wharf boats, barges and other water craft, shall be required to list the same for assessment and taxation in the county, town, city, village or district in which the same may belong or be enrolled, registered or licensed, or kept when not enrolled, registered or licensed.

See § 3, ante. Listing property of banks. § 30, post.

[The general presumption that public officers do their duty does not, in a suit against a corporation for taxes, establish the essential fact that the principal office of the corporation is in town where such taxes were assessed in which the clerk extended them. *Twin City Works v. People*, 156 Ill. 387; s. c., 40 N. E. Rep. 950.

Assessment of corporations—what is a manufacturing corporation. *Distilling Co. v. People*, 161 Ill. 101; s. c., 43 N. E. Rep. 779.]

§ 14. The personal property of gas and coke companies, except the pipes laid down, shall be listed and assessed in the town, village, district or city where the principal works are located. Gas mains and pipes, laid in roads, streets or alleys, shall be held to be personal property, and listed and assessed as such, in the town, district, village or city where the same are laid.

See § 3, ante.

§ 15. The personal property of street railroad, plankroad, gravel road, turnpike or bridge companies, shall be listed and assessed in the county, town, district, village or city where the principal place of business is located. The track, road or bridge shall be held to be personal property, and listed and assessed as such, in the town, district, village or city where the same is located or laid.

See § 3, ante.

§ 16. The horses, stages and other personal property of stage companies or persons operating stage lines, shall be listed and assessed in the county, town, city or district where they are usually kept.

See § 3, ante.

§ 17. The personal property of express or transportation companies shall be listed and assessed in the county, town, district, village or city where the same is usually kept.

See § 3, ante.

§ 20. Persons, for themselves or others, holding bonds or stocks of any kind, the principal of which bonds or stocks has been or may hereafter be exempt from taxation, shall list the amount of accrued interest on such bonds, without regard to the time when the same is to be paid.

See § 1, ante.

§ 26. That whenever the assessor shall be of opinion that the person listing property for himself or for any other person, company or corporation, has not made a full, fair and complete schedule of such property, he may examine such person under oath in regard to the amount of the property he is required to schedule, and for that purpose he is authorized to administer oaths; and if such person shall refuse to answer under oath and a full discovery make, the assessor may list the property of such person or his principal, according to his best judgment and information. If the person so examined shall swear falsely, he shall be guilty of perjury, and punished accordingly.

[Private corporations are under duty to furnish the assessor a schedule of taxable property, under oath, when called for by the assessor for that purpose. *N. Y., etc., Exch. v. Gleason*, 121 Ill. 508; s. c., 13 N. E. Rep. 204.

The statement to the assessor who calls for a schedule of the corporate property that its only personality is its office furniture, etc., does not relieve him of his duty—if no schedule is presented—of assessing the corporation according to his best judgment and information. *Id.*]

§ 27. In making up the amounts of credits which any person is required to list for himself, or for any other person, company or corporation, he shall be entitled to deduct from the gross amount of credits the amount of all bona fide debts owing by such \* \* \* company or corporation, to any other person, company or corporation, for a consideration received; but no acknowledgment of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others, shall be deducted as the person making out the statement believes he is legally and equitably bound, and will be compelled to pay on account of the inability or insolvency of the principal debtor; and if there are other sureties who are able to contribute, then only so much as

the surety in whose behalf the statement is made will be bound to contribute: Provided, That nothing in this section shall be so construed as to apply to any bank, company or corporation exercising banking powers or privileges, or to authorize any deductions allowed by this section from the value of any other item of taxation than credits.

See § 1, ante.

§ 28. No person, company or corporation shall be entitled to any deduction from the amount of any bonds, stocks, or money loaned, or on account of any bond, note or obligation of any kind, given to any insurance company on account \* \* \* of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated.

§ 30. Every bank (other than a national bank), banker, broker or stock jobber, shall, at the time fixed by this act for listing personal property, make out and furnish the assessor a sworn statement, showing:

First. The amount of money on hand or in transit.

Second. The amount of funds in the hands of other banks, bankers, brokers, or others, subject to draft.

Third. The amount of check, or other cash items, the amount thereof not being included in either of the preceding items.

Fourth. The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.

Fifth. The amount of bonds and stocks of every kind, and shares of capital stock of joint-stock or other companies or corporations, held as an investment, or in any way representing assets.

Sixth. All other property appertaining to said business, other than real estate, (which real estate shall be listed and assessed as other real estate is listed and assessed under this act.)

Seventh. The amount of all deposits made with them by other parties.

Eighth. The amount of all accounts payable, other than current deposit accounts.

Ninth. The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item.

The aggregate amount of the first, second and third items in said statement, shall be listed as moneys. The amount of the sixth item shall be listed the same as other similar personal property is listed under this act. The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the fourth item of said statement, and the amount of the remainder,

if any, shall be listed as credits. The aggregate amount of the ninth item shall be deducted from the aggregate amount of the fifth item of such statement, and the remainder shall be listed as bonds or stocks.

Personal property of banks, not provided for. § 13, ante.

§ 32. Bridges, express ferry, gravel, road, gas, insurance, mining, plankroad, stage, steamboat, street railroad, transportation, turnpike and all other companies and associations incorporated under the laws of this State other than banks organized under any special or general law of this State and the corporations required to be assessed by the local assessors as hereinbefore provided, shall in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if no market value, then the actual value of the shares of stock.

Fifth. The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The assessed valuation of all its tangible property: such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information which he can obtain. (As amended by act approved and in force June 19, 1893.)

See § 1, ante. §§ 7-26, ante.

[Assessment of capital stock of a corporation does not amount to double taxation because of a tax already paid on tangible property which was represented by capital stock, where it does not appear that the stock assessed is not in excess of the value of the tangible property. *Distilling Co. v. People*, 161 Ill. 161; s. c., 43 N. E. Rep. 779.

The taxation of the capital stock of a corporation is properly based upon the amount of its debts, where the capital has been wholly swallowed up by indebtedness. *Bridge Co. v. People*, 161 Ill. 132; s. c., 43 N. E. Rep. 691.]

§ 33. Such statements shall be scheduled by the assessor; and such schedule, with the statements so scheduled, shall be returned by the assessor to the county clerk. Said



## Foreign corporation — Act, May 26, 1897.

clerk shall, at the time he makes his report of assessment, forward to the auditor all such schedules and statements so returned to him. The auditor shall, annually, on the meeting of the State board of equalization, lay before said board the schedules and statements herein required to be returned to him; and said board shall value and assess the capital stock of such companies or associations, in the manner provided in this act.

[This section declared constitutional. *Gas Co. v. Higby*, 134 Ill. 568; s. c., 25 N. E. Rep. 660. State board of equalization not concluded by value of corporate property placed on it by company's officers. *Id.* Nor is it essential that the board

should first hear evidence in fixing or changing the valuation. *Id.* The members of the board must act on their own knowledge and judgment. *Id.* See, also, *R. R. Co. v. Donohue*, 127 Ill. 27; s. c., 18 N. E. Rep. 827.

Duty of foreign corporation which is lessee of lines of a domestic corporation to make return to auditor under this section. *Tel. Co. v. Barnard*, 37 Ill. App. 111.]

§ 34. Every person owning or using a franchise granted by any law of this State, shall, in addition to his other property, list the same as personal property, giving the total value thereof.

See § 3, ante.

## LEGISLATIVE ACTS RELATING TO CORPORATIONS, ENACTED IN 1897.

1. Relating to foreign corporations.
2. Relating to employment.

## Act 1.

## Foreign Corporations.

- Sec. 1. Foreign corporations to maintain a public office or place in this State, for the transaction of its business.
2. Copy of articles of incorporation to be filed in the office of the secretary of State — incorporating taxes and fees to be paid into the office of the secretary of State.
  3. Liable to fine of \$1,000 — duties of the secretary of State.
  4. Act does not apply to insurance companies — repeal.

AN ACT to require every foreign corporation doing business in this State to have a public office or place in this State at which to transact its business, subjecting it to a certain condition, and requiring it to file its articles or charter of incorporation with the secretary of State, and to pay certain taxes and fees thereon.

Section 1. Be it enacted by the people of the State of Illinois, represented in the general assembly: Every corporation for pecuniary profit formed in any other State, territory or country, before it shall be authorized or permitted to transact business in this State, or to continue business therein, if already established, shall have and maintain a public office or place in this State for the transaction of its business, where legal service may be obtained upon it and where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporations; and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this

State, and shall have no other or greater powers. And no foreign corporation established or maintained in any way for pecuniary profit of its stockholders or members shall engage in any business other than that expressly authorized in its charter, or the law of this State under which it may come, or shall it hold any real estate except such as may be necessary and proper for carrying on its legitimate business. And no corporation incorporated under the laws of any other State, territory or country, doing business in this State, shall be permitted to mortgage, pledge or otherwise encumber its real or personal property situated in this State to the injury or exclusion of any citizen or corporation of this State who is a creditor of such foreign corporation. And no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State, until all its liabilities due to any person or corporation in this State at the time of recording such mortgage have been paid and extinguished.

§ 2. Every company incorporated for purposes of gain under the laws of any other State, territory or country, now or hereafter doing business within this State, shall file in the office of the secretary of State a copy of its charter or articles of incorporation, or in case such company is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly certified and authenticated by the proper authority; and the principal or agent in Illinois of the said corporation shall make and forward to the secretary of State, with the articles or certificates above provided for, a statement duly sworn to of the proportion of the capital stock of the said corporation which is represented by its property located and business transacted in the State of Illinois; and such corporation shall be required to

pay into the office of the secretary of State of this State, upon the proportion of its capital stock represented by its property and business in Illinois, incorporating taxes and fees equal to those required of similar corporations formed within and under the laws of this State. Upon a compliance with the above provisions by said corporation, the secretary of State shall give a certificate that said corporation has duly complied with the laws of this State and is authorized to do business therein, stating the amount of its entire capital and of the proportion thereof which is represented in Illinois; and such certificates shall be taken by all courts in this State as evidence that the said corporation is entitled to all the rights and benefits of this act, and such corporation shall enjoy those rights and benefits for the time set forth in its original charter or articles of association, unless this shall be for a greater length of time than is contemplated by the laws of this State, in which event the time and duration shall be reckoned from the creation of the corporation to the limit of time set out in the laws of this State. Provided, That nothing in this act shall be taken or construed into releasing foreign loan, building and loan, or bond investment companies, or other corporations, on the partial payment or installment plan, from any provisions of law requiring them to make a deposit of money with a proper officer of this State to protect from loss the citizens of this State who may do business with such loan, building and loan or bond investment companies, or other corporations: Provided, That the requirement of this act to pay incorporating tax or fee shall not apply to railroad companies which have heretofore built their line of railway into or through this State: And, provided, further, That the provisions of this act are not intended to, and shall not, apply to "drummers" or traveling salesmen soliciting business in this State for foreign corporations which are entirely non-resident.

§ 5. Every corporation for pecuniary profit formed in any other State, territory or country, now doing business in, or which may hereafter do business in this State, which shall neglect or fail to comply with the conditions of this law, shall be subject to a fine of not less than one thousand dollars, to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the secretary of State, immediately after September first of the year eighteen hundred and ninety-seven, and as often thereafter as he may be advised that corporations are doing business in contravention to this act, to report the fact to the prosecuting attorney of the county in which the business of such corporation is located, and the prosecuting attorney shall, as soon thereafter as is practicable, institute proceedings to recover the fine herein provided for, which shall go

into the revenue fund of this State, in addition to which penalty on and after the going into effect of this act, no foreign corporation, as above defined, which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this State upon any demand, whether arising out of contract or tort: Provided, That the provisions of this section shall not apply to railroad and telegraph companies which have heretofore built their line into or through this State, nor to "drummers" or traveling salesmen soliciting business in this State for foreign corporations which are entirely non-resident.

§ 4. This act does not apply to insurance companies, and is not to be taken or construed to change or modify the laws which are directly applicable to that character of corporations, but apart from the insurance laws all acts and parts of acts inconsistent with this act are hereby repealed.

(Approved May 26, 1897.)

See ch. 32, § 26, and notes.

## Act 2.

### Employment.

- Sec. 1. Provides that no child under the age of fourteen shall be permitted to work for wages.
2. Employers to keep registers.
3. Lists to be posted in a conspicuous place containing the name and age of employees.
4. Persons under the age of sixteen years not allowed to work more than sixty hours in any one week.
5. Presence of persons under the age of sixteen years in any manufacturing establishment prima facie evidence of their being employed.
6. Persons under the age of sixteen years not allowed to work at any hazardous employment.
7. Duty of the State factory inspector.
8. Meaning of the words "manufacturing establishment," "factory" or "workshop."
9. Penalty for violations of the provisions of act.
10. Repeal.

AN ACT to regulate the employment of children in the State of Illinois, and to provide for the enforcement thereof.

Section 1. Be it enacted by the people of the State of Illinois, represented in general assembly: That no child under the age of fourteen years shall be employed, permitted or suffered to work for wages at any gainful occupation hereinafter mentioned.

§ 2. It shall be the duty of every person, firm or corporation, agent or manager of any firm or corporation employing minors in any mercantile institution, store, office, laundry, manufacturing establishment, factory or workshop within this State to keep a register in said mercantile establishment, store, office, laundry, manufacturing establishment, factory or workshop in which said

## Employment of children — Act, June 9, 1897.

mirrors shall be employed or permitted or suffered to work, in which register shall be recorded the name, age and place of residence of every child employed or permitted or suffered to work therein under the age of sixteen years, and it shall be unlawful for any person, firm or corporation, agent or manager of any firm or corporation to hire or employ, or to permit or to suffer to work in any mercantile institution, store, office, laundry, manufacturing establishment, factory, or workshop, any child under the age of sixteen years and over the age of fourteen, unless there is first provided and placed on file in such mercantile institution, office, laundry, manufacturing establishment, factory or workshop an affidavit made by the parent or guardian stating the name, date and place of birth of such child. If such child shall have no parent or guardian, then such affidavit shall be made by the child. And the register and affidavits herein provided for shall, on demand, be produced and shown for inspection to the State factory inspector, assistant State factory inspector, or deputy State factory inspector.

§ 3. Every person, firm or corporation, agent or manager of a corporation employing, or permitting or suffering to work children under the age of sixteen years, and over the age of fourteen years, in any mercantile institution, store, office, laundry, manufacturing establishment, factory or workshop shall post, and keep posted in a conspicuous place in every room in which such help is employed, or permitted or suffered to work, a list containing the name, age and place of residence of every person under the age of sixteen years employed, permitted or suffered to work in such room.

§ 4. No person under the age of sixteen years shall be employed or suffered to work for wages at any gainful occupation more than sixty hours in any one week, nor more than ten hours in any one day.

§ 5. The presence of any person under sixteen years of age in any manufacturing establishment, factory or workshop shall constitute prima facie evidence of his or her employment therein.

§ 6. No child under the age of sixteen

years shall be employed, or permitted or suffered to work by any person, firm or corporation in this State at such extra hazardous employment whereby its life or limb is in danger, or its health is likely to be injured, or its morals may be depraved.

§ 7. It shall be the duty of the State factory inspector to enforce the provisions of this act, and to prosecute all violations of the same before any magistrate or any court of competent jurisdiction in this State. It shall be the duty of the State factory inspector, assistant State factory inspector, and of the deputy State factory inspectors, under the supervision and direction of the State factory inspector, and they are hereby authorized and empowered to visit and inspect, at all reasonable times, and as often as possible, all places covered by this act.

§ 8. The words "manufacturing establishment," "factory," or "workshop," as used in this act, shall be construed to mean any place where goods or products are manufactured or repaired, dyed, cleaned or sorted, stored or packed, in whole or in part, for sale or for wages, and not for personal use of the maker, or his or her family or employer.

§ 9. Any person, firm or corporation, agent or manager of any corporation, who, whether for himself or for such firm or corporation, or by himself or through sub-agents or foreman, shall violate or fail to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100) for each offense. Any corporation which, by its agents, officers or servants, shall violate or fail to comply with any of the provisions of this act shall be liable to the above penalties, which may be recovered against such corporation in an action for debt or assumpsit, brought before any court of competent jurisdiction in this State.

§ 10. All acts or parts of acts inconsistent with this act are hereby repealed.

(Approved June 9, 1897.)

See Statutes, ch. 48.



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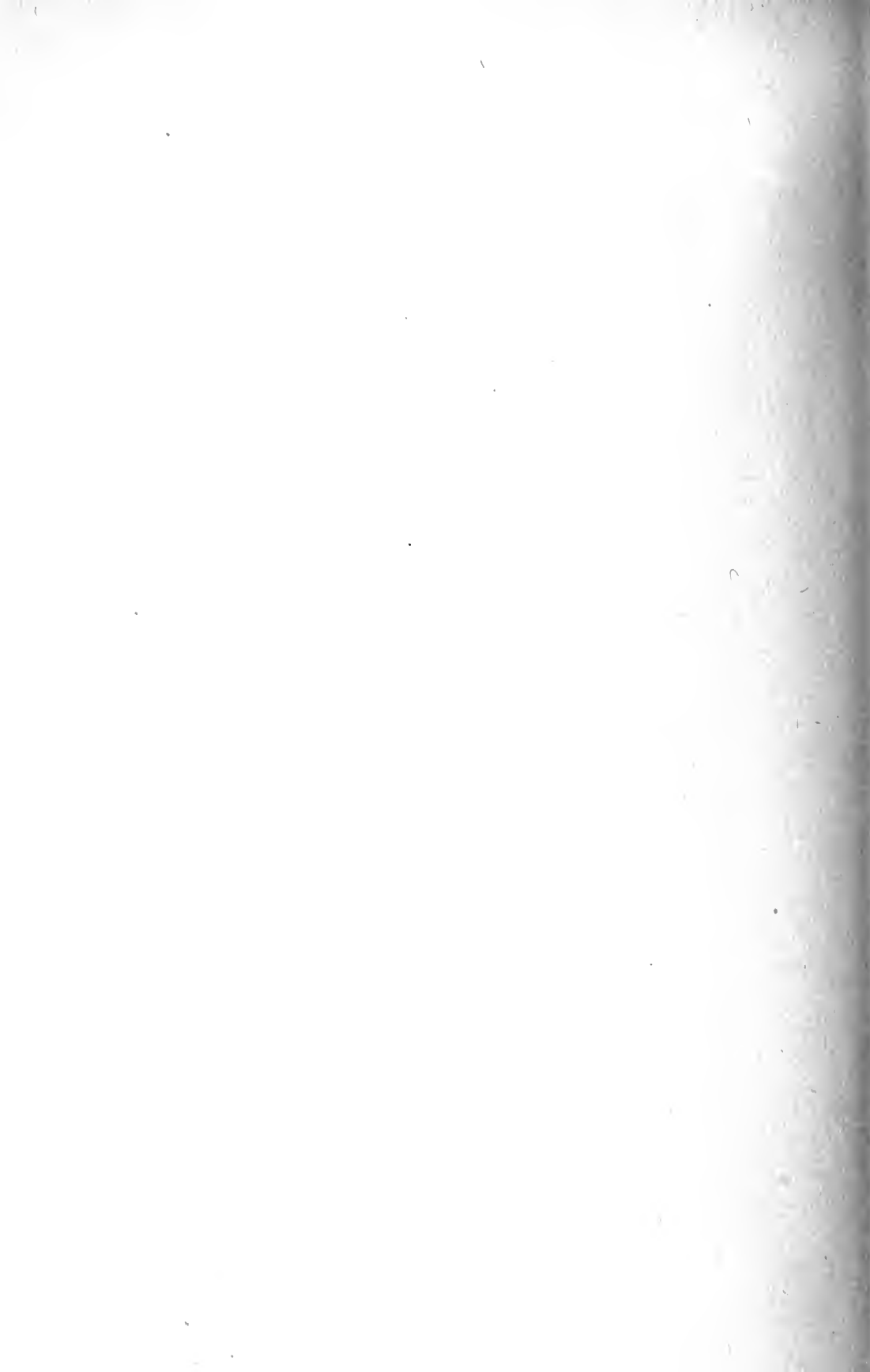
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# INDIANA.

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LEGISLATIVE ACTS ENACTED SUBSEQUENTLY TO 1894.



# INDIANA.

## CONSTITUTION OF INDIANA—1851.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Bill of Rights.

Sec. 66. Private property not to be taken without compensation.

69. Obligation of contracts not to be impaired.

#### ARTICLE X.

##### Finance.

Sec. 198. No county shall loan its credit to, or subscribe for stock in any incorporated company.

#### ARTICLE XI.

##### Corporations.

Sec. 211. State not to be a stockholder in, or loan its credit to any corporation.

212. Corporations to be formed under general laws only.

213. Dues from corporations to be secured by individual liability.

#### ARTICLE I.

##### Bill of Rights.

§ 66. \* \* \* No man's property shall be taken by law without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.

[Above prohibition does not extend to the taxing power. *Aurora v. West*, 9 Ind. 74.

Compensation for private property taken by a private corporation must first be assessed and tendered. *Sidener v. Turnpike Co.*, 23 Ind. 623.

Circumstances under which right of eminent domain may be exercised is a legislative question. *Consumers, etc., Co. v. Harless*, 131 Ind. 446; s. c. 29 N. E. Rep. 1062.

State regulation of property devoted to a public use is not the taking of property within meaning of above section, nor is it an interference with

guaranteed rights of citizens in public property. *Hockett v. State*, 105 Ind. 251; s. c. 5 N. E. Rep. 262.]

§ 69. No ex post facto law, or law impairing the obligation of contracts, shall be passed.

See § 3423, and note.

[The charter of a corporation is a contract between the corporation and the State, and secures to the company a vested right in its franchise. *Turnpike Co. v. Holthouse*, 7 Ind. 59. At least, after interests have become vested under it. *Smead v. R. R. Co.*, 11 Ind. 105; see, also, *Bauk v. State*, 1 id. 267.

The term ex post facto relates only to criminal laws. *Andrews v. Russell*, 7 Blackf. 474.

Grant of privilege to carry on lottery does not constitute a contract, and may be repealed by legislature. *State v. Woodward*, 89 Ind. 110.]

#### ARTICLE X.

##### Finance.

§ 198. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription, nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company; nor shall the general assembly ever on behalf of the State, assume the debts \* \* \* of any corporation whatever.

[Section construed. *R. R. Co. v. Geiger*, 34 Ind. 185.

A county cannot subscribe for such stock without appropriate affirmative legislation authorizing it. Id.

The words "incorporated company" refer to associations created for public benefit. Id.

If county subscribes for stock, it must be paid for in money at time of subscription. Id.

Aid to be furnished to incorporated companies by counties is limited to the taking of stock. State v. Wheadon, 39 Ind. 521.]

## ARTICLE XI.

### Corporations.

§ 211. The State shall not be a stockholder in any bank, after the expiration of the present bank charter, nor shall the credit of the State ever be given, or loaned, in aid of any person, association, or corporation; nor shall the State hereafter become a stockholder in any corporation or association.

§ 212. Corporations, other than banking, shall not be created by special act, but may be formed under general laws.

See §§ 3423 et seq., 5051 et seq.

§ 213. Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law.

See § 3441.

[Above section in no way affects the proper construction of the acts to secure dues from private corporations. Wood v. Harrison, 50 Ind. 480.]

## INDIANA STATUTES — 1894.

## CHAPTER II.

## Civil Procedure.

- Art. 7. Venue.  
 8. Actions, how commenced.  
 10. Pleadings.  
 26. Execution.  
 31. Attachment.  
 32. Attorneys.  
 34. Change of name.  
 47. Receivers.  
 50. General provisions.

## ARTICLE VII.

## Venue.

- Sec. 310. Corporations, etc.; agency.  
 312. Railroads and other carriers.  
 313. Corporations, venue of actions against.  
 315. Foreign corporations, venue of actions against.

§ 310. When a corporation, company, or individual has an office or agency in any county for the transaction of business, any action growing out of, or connected with, the business of such office may be brought in the county where the office of the agency is located, at the option of the plaintiff, as though the principal resided therein; and service upon any agent or clerk employed in the office or agency shall be sufficient service upon the principal; or process may be sent to any county, and served upon the principal.

Power of corporation to sue and be sued. § 3425, and note.

[Railroad company may be regarded as resident in each county in which it has an office or agency, or an officer or agent upon whom process may be served. *R. R. Co. v. Haskell*, 11 Ind. 301. Section construed. *Id.*; *Ry. Co. v. Owen*, 43 Ind. 405; *Rauber v. Whitney*, 125 id. 216; s. c., 25 N. E. Rep. 186.

Where person upon whom process was served was agent of the corporation in the county only where action was commenced, and contract sued on was made out of the State and not connected with his business, there is no jurisdiction. *Ins. Co. v. Black*, 80 Ind. 513.

And in an action against a corporation under above section, an agency for the transaction of business must be shown to exist in the county at time suit is commenced. *Ins. Co. v. Capehart*, 108 Ind. 270; s. c., 8 N. E. Rep. 285.]

§ 312. An action against a railroad or canal corporation or company, or owner of a line of stage or coaches, for an injury to person or property upon the railroad, canal, or line of stages or coaches of the defendant, or

upon a liability as a carrier, may be brought in any county through or into which such railroad, canal, or line of stages or coaches passes; and the summons may be served in any county in the State.

[Venue of actions to enforce liability under the statute. *R. R. Co. v. Renner*, 17 Ind. 135; *Ry. Co. v. Breckenridge*, 64 id. 113; *R. R. Co. v. Pierce*, 95 id. 496; *Croy v. Ry. Co.*, 97 id. 126. To enforce common-law liability. *Ry. Co. v. Milligan*, 52 Ind. 509; *R. R. Co. v. Barton*, 61 id. 293; *R. R. Co. v. Pierce*, supra.]

§ 313. Any action against a corporation may be brought in any county where the corporation has an office for the transaction of business, or any person resides, upon whom process may be served against such corporation, unless otherwise provided in this act.

[Under this section action may be brought against railroad company in any county where there is a person upon whom process may be served. *Evansville, etc., Co. v. Spellbring*, 1 App. 167; s. c. 27 N. E. Rep. 239.]

§ 315. Actions may be brought against a corporation created by or under the laws of any other State, government or county, in any court having jurisdiction of the amount demanded, by any person having a cause of action, in any county within the State, where any property, moneys, credits or effects belonging or due to the corporation may be found.

See §§ 3453-3461.

[“Foreign corporation” defined. *Daly v. Ins. Co.*, 64 Ind. 1.

Corporation created by act of Congress is a corporation of the District of Columbia; as Congress cannot under the Federal Constitution, as the Congress of the United States, create a private corporation. *Id.*]

## ARTICLE VIII.

## Actions, How Commenced.

- Sec. 318. Service on corporations.  
 320. Service by publication.

§ 318. The process against either a domestic or foreign corporation may be served on the president, presiding officer, chairman of the board of trustees, or other chief officer (or if its chief officer is not found in the county, then upon its cashier,

Service of process; pleadings; execution — Civ. Pro., §§ 320, 362, 735.

treasurer, director, secretary, clerk, general or special agent), or if it is a municipal corporation, upon its mayor, marshal, or if it is an incorporated library company, upon its librarian. If none of the aforesaid officers can be found, then upon any person authorized to transact business in the name of such corporation, and if no such person, officer or agent be found in the county where suit is pending, process may be sent for service to any other county in the State where such person, officer, or agent may be found. In case of a corporation operating a steamboat or steamboats, process against such corporation, if none of the aforementioned persons upon whom service can be made is found in the county in which said process issued, then such process may be served upon any wharfmaster of any wharf boat in the State over and upon which said corporation receives or discharges freight or passengers: Provided, however, That process shall not be served upon any such person, officer, or agent when he is plaintiff in the suit; but in such cases process shall be served upon some other such person, officer, or agent of the corporation than such plaintiff; and in case the defendant be a foreign corporation, having no such person, officer, or agent, resident in the State, service may be made in the same manner as against other non-residents.

Power of corporation to sue and be sued. § 3425. and note. Actions commenced, where. § 310 et seq.

[This section designates three classes of officers or agents of corporations, upon whom process may be served; first, chief officers; second, officers of secondary rank; third, any person authorized to transact business in the name of the corporation. *Ry. Co. v. Owen*, 43 Ind. 405.]

Service on a local freight agent is good, though superintendent and director resides in the county, and conductors daily pass on the trains. *Id.*

Service upon agent of telegraph company, there being no higher officer in the bailiwick, was held sufficient. *Tel. Co. v. Lindley*, 62 Ind. 371.

Where person upon whom process was served was agent of the corporation in the county only where action was commenced, and contract sued on was made out of the State and not connected with the business of his office, there is no jurisdiction. *Ins. Co. v. Black*, 80 Ind. 513.

Above section relates to foreign corporations in general, and has no application to such corporations as are under special regulations. *Rehm v. Ins. Co. & Sav. Inst.*, 125 Ind. 135; s. c., 25 N. E. Rep. 173.

Service of summons on a local agent held good against a domestic insurance company having its home office in another county, though the action did not grow out of, and was not connected with, the business of the office where the suit was brought. *Globe Acc. Ins. Co. v. Reid*, 47 N. E. Rep. 917.]

§ 320. The clerk, by order of the court, if in session, or in vacation without such order, shall cause a notice of the pendency of any action, and the term at which the same will stand for trial, to be published for three weeks successively, in some newspaper of general circulation, named by the plaintiff

or his attorney, printed in the English language, and published in the county (or if none be printed or published therein, then in the county in this State nearest thereto in which any such paper may be printed), in either of the following cases shown by affidavit:

First. When the defendant is a foreign corporation and has property within the State, or the cause of action arose therein.

\* \* \* \* \*

## ARTICLE X.

### Pleadings.

Sec. 362. Interrogatories to be answered by corporations.

§ 362. Either party may propound interrogatories, to be filed with the pleadings, relevant to the matter in controversy, and require the opposite party to answer the same under oath. And corporations, through their proper officers, agent, or agents, shall be required to answer interrogatories as natural persons. \* \* \*

## ARTICLE XXVI.

### Execution.

Sec. 735. Against shares of stock.

§ 735. Shares of stock in any corporation or company may be levied upon and sold in the county where the office and books showing the shares of stock and stockholders of the corporation or company are kept; and the sheriff shall transfer the stock, subject to the rights of the corporation or company. The sheriff shall have access to the books of any corporation or company in his county, for the purpose of making the levy; and if refused access, the court shall enforce the right. The shares of stock subject to be levied upon shall be bound by the execution from the time of the levy; and when such levy is made, the sheriff shall leave a notice thereof with the officers of the company, and such levy shall constitute a lien upon the stock from the time of such levy.

[Mandate lies to compel the officers of a bank to give a sheriff access to its books to transfer stock of the bank to one whom he has sold such stock on execution. *State ex rel. Koons v. Bank*, 89 Ind. 302.]

## ARTICLE XXXI.

### Attachments.

Sec. 925. Causes.

945. Statement of garnishee and examination.  
970. Wages; parties non-resident, no jurisdiction.

971. Wages for one month exempt.

972. Garnishee may pay one month's wages.

§ 925. The plaintiff, at the time of filing his complaint, or at any time afterward,

Attachment; change of name; receivers — Civ. Pro., §§ 945, 970-973, 1012-1016.

may have an attachment against the property of the defendant, in the cases and in the manner hereinafter stated, where the action is for the recovery of money:

First. Where the defendant, or one of several defendants, is a foreign corporation or a non-resident of this State.

\* \* \* \* \*

§ 945. It shall be the duty of any officer or agent of any association or corporation, and of every other person summoned as a garnishee, when served, or within five days afterward, to furnish the sheriff with a certificate of the number of shares or rights of the defendant in the stock of such corporation or association; or a description of the property held by such corporation, association, or person, belonging to or for the benefit of the defendant; or the amount of the debt owing to the defendant by such association, corporation, or person, whether due or not; which certificate shall be returned by the sheriff with the summons. If such officer, agent, or person refuse to do so, he may be required by the court to attend before it, and be examined, on oath, concerning the same; and obedience to the orders may be enforced by attachment.

See § 3426.

[Shares of stock in a private corporation may be reached by attachment. *Quarl v. Abbett*, 102 Ind. 233; s. c., 1 N. E. Rep. 476.]

§ 970. Hereafter no court in this State shall have or entertain jurisdiction in any action of attachment, garnishment, or supplementary proceeding, when the plaintiff and principal defendant are both non-residents of this State, and the money sought to be reached by such attachment, garnishment, or supplementary proceedings is the personal earnings or wages due or owing to the principal defendant from any person or corporation doing business in this State.

§ 971. The wages of all persons in the employ of any person or corporation shall be exempt from garnishment and proceedings supplemental to execution in the hands of such person or corporation, so long as such employe remains in such employment, not exceeding one month's wages at any one time.

§ 972. Any person or corporation in debt for wages, as in the preceding section provided, may, at any time after being served with a garnishee summons, pay to any such employe the amount of wages exempted by the preceding section; and such payment shall discharge such garnishee defendant from liability for the amount so paid, as effectually as if paid before the issuing of such summons.

Blacklisting of employes prohibited. §§ 7076-7078. Personal injury to employes. § 7083 et seq.

## ARTICLE XXXII.

### Attorneys.

Sec. 973. Who may conduct civil actions.

§ 973. A civil action may be prosecuted or defended by a party in person or by attorney, except that a corporation appears by attorney in all cases.

Power to sue and be sued. § 3425, and note.

## ARTICLE XXXIV.

### Change of Name.

Sec. 1012. Petition to circuit court.

1013. Application, where made.

1014. Notice by publication.

1015. Proof of publication.

1016. Copy of decree evidence.

§ 1012. The circuit courts in the several counties of this State may change the names of persons and corporations on application by petition.

§ 1013. The application of a person may be made to the circuit court of the county in which such person resides, and of a corporation to the circuit court of the county in which such corporation is situate or in which its principal office is located.

§ 1014. Upon a petition being filed for such change, the applicant shall give notice thereof by three weekly publications in some newspaper of general circulation printed and published in the proper county, or, if no newspaper be printed therein, in a newspaper printed and published nearest thereto in some adjoining county, thirty days prior to the first day of the term at which such petition shall be heard.

§ 1015. Proof of the publication required in this act shall be made by filing a copy of such published notice, verified by the affidavit of a disinterested person; and when such proof of such publication is made, the court shall proceed to hear and determine said petition, and make such order and decree therein as to such court shall seem just and reasonable.

§ 1016. A copy of the decree of such court, changing the name of any person or corporation, certified under the seal of such court by the clerk thereof, shall be sufficient evidence of the name of such person or corporation, and of such change having been made, in any court of this State.

## ARTICLE XLVII.

### Receivers.

Sec. 1236. When appointed.

1237. Who shall not be.

§ 1236. A receiver may be appointed by the court, or a judge thereof in vacation, in the following cases:

\* \* \* \* \*

Fifth. When a corporation has been dissolved, or is insolvent, or is in imminent

Receivers; general provisions — Civ. Pro., §§ 1309, 1754, 1970, 1972.

danger of insolvency, or has forfeited its corporate rights.

\* \* \* \* \*

[See *Howard v. Whitman*, 29 Ind. 557; *Bank v. United States, etc., Co.*, 105 Ind. 227; s. c., 4 N. E. Rep. 846; *Wayne Co. v. Hammons*, 129 Ind. 368; s. c., 27 N. E. Rep. 487.]

§ 1237. No party or attorney, or other person interested in an action, shall be appointed receiver therein.

## ARTICLE L.

### General Provisions.

Sec. 1309. Certain words, how construed.

§ 1309. In the construction of this act, the following rules shall be observed, when consistent with the context:

The word "person" extends to bodies politic and corporate.

See § 1972.

[The provision of the Civil Code does not apply to the Criminal Code. *State v. R. R. Co.*, 23 Ind. 362.]

## CHAPTER IV.

### Criminal Procedure.

Art. 9. Arrest and recognizance.  
22. General provisions.

## ARTICLE IX.

### Arrest and Recognizance.

Sec. 1754. Summons against a corporation.

§ 1754. When an indictment is returned or an information filed against a corporation, a writ of summons, commanding the sheriff to notify the accused thereof, and returnable on the tenth day after its date, shall issue on the precept of the prosecuting attorney. Such summons, together with a copy of the indictment or information, shall be served and returned in the manner provided for the service of summons upon such corporations in civil actions. The corporation, on or before the return day of a summons duly served, may appear by one of its officers, or by counsel, and answer to the indictment or information by motion or plea; and upon its failure to make such appearance and answer, the clerk shall enter a plea of "not guilty;" and upon such appearance being made or plea entered, the corporation shall be deemed, thenceforth, continuously present in court until the case is finally disposed of.

[Whatever may be the rule where the common law as to crimes is recognized, in this State, under the criminal law, a corporation cannot be prosecuted by information or otherwise for a misfeasance. *State v. R. R. Co.*, 23 Ind. 365.

Where a corporation is in hands of receiver, it cannot be prosecuted for crimes or misdemeanors committed by agents or servants. *State v. R. R. Co.*, 115 Ind. 466; s. c., 17 N. E. Rep. 909.]

## ARTICLE XXII.

### General Provisions.

Sec. 1970. Corporations punishable.  
1972. "Person" defined.

§ 1970. Corporations may be prosecuted by indictment or information, for erecting, continuing, or maintaining a public nuisance, or for obstructing a public highway or a navigable stream.

[A corporation may be prosecuted criminally for obstructing a public highway. *State v. R. R. Co.*, 129 Ind. 298; s. c., 22 N. E. Rep. 307.

The necessary and reasonable using of highway by a railroad company is not an illegal obstruction of the highway. *State v. R. R. Co.*, 86 Ind. 114.]

§ 1972. When the term "person," or other word, is used to designate the party whose property is the subject of an offense, or against whom any act is done, with intent to defraud or injure, the term may be construed to include \* \* \* any public or private corporation.

See § 1309.

[The provision of the Civil Code that the word "person" extends to bodies politic and corporate, does not apply to the Criminal Code; and such construction would lead to absurdities. *State v. R. R. Co.*, 23 Ind. 364.

Above statute includes a church corporation in the term "person." *White v. State*, 69 Ind. 274.]

## CHAPTER XXI.

### Corporations Generally.

Sec. 3423. Evidence of organization.  
3424. Filing articles with secretary of State.  
3425. Powers of corporation.  
3426. Shares numbered; certificate.  
3427. First meeting; notice.  
3428. Officers; vacancies.  
3429. Continuance after dissolution.  
3430. Liability of stockholders.  
3431. Fiduciaries.  
3432. Voting.  
3433. Stockbook.  
3434. Penalty.  
3435. Receiver, when charter expires.  
3436. Jurisdiction of circuit court.  
3437. Receivers' duties.  
3438. Disposition of surplus.  
3439. Judgment; franchise forfeited.  
3440. Receivers' pay; surplus to stockholders.  
3441. Debts, how secured.  
3442. Borrowing on mortgage.  
3443. Discounts valid.  
3444. Contracts valid.  
3445. Special charters extended.  
3446. Place of business; directors.  
3447. Election of directors.  
3448. Number.  
3449. Stock; share.  
3450. Fire insurance company; real estate.  
3451. Insolvency; stockholders' liability.  
3452. Change of name.

§ 3423. When the steps necessary to an organization of a corporation, municipal or private, under any general law, have been completed, a statement thereof may be filed in the office of the clerk of the circuit court of the proper county; and such court, at its



## Articles of incorporation; powers — Stat., §§ 3424, 3425.

next term thereafter, shall, on proof of such organization, cause to be entered of record, in the order-book, an order declaring the existence of such corporation; and such order shall be conclusive as to the fact of such existence at the date which such court may fix in such order.

See Const., art. I, § 69; art. XI, § 212; Statutes, § 5128. Creation of association for manufacturing mining, etc. See § 5051 et seq. Expiration of charter. § 3435. Continuance after dissolution. § 3429.

[Charter of a corporation constitutes a contract between it and the State, securing to it a vested right in its franchise, subject to any cause of forfeiture existing at the time of the enactment of charter, but cannot be divested of a subsequent enactment. *Turnpike Co. v. Holthouse*, 7 Ind. 59; *Smead v. R. R. Co.*, 11 id. 104; *State v. Dawson*, 22 id. 272.

But it is competent for the legislature, at its pleasure, to alter the remedy for enforcing the franchise. *Turnpike Co. v. Holthouse*, supra.

After vested rights have been acquired, charter cannot be so amended as to impair them, unless power to amend is expressly reserved. *R. R. Co. v. Clifford*, 113 Ind. 460; s. c., 15 N. E. Rep. 524; see also *Roe v. R. R. Co.*, 10 id. 93.

Before charters granted by legislature have any effect they must be accepted by the corporators. And amendatory acts are valid if passed before acceptance of original. *R. R. Co. v. Clifford*, 113 Ind. 460; s. c., 15 N. E. Rep. 524.

As to what acts on the part of corporators constitute an acceptance of charter, see *State v. Dawson*, 22 Ind. 272.

A corporation exists not by contract but by statute, and where its rights or modes of action are marked out by statute, they cannot be changed even by the contracts of the corporators. *Ins. Co. v. Nunumacher*, 15 Ind. 294.

Until statutory requirements to organize a corporation have been complied with, a subscriber to articles of association is not estopped to deny existence of the corporation. *F. & M. Co. v. Herkimer*, 46 Ind. 142.]

§ 3424. (As amended March 11, 1895.) That all persons, corporations, companies and associations desiring to incorporate under the laws of the State of Indiana, or desiring to enter into any agreement of consolidation of the interests, rights and powers of two or more existing corporations, and who are not now by law required to do so, shall be, and are, hereby required to file with the secretary of State certified copies or duplicates of their articles of incorporation or association or of consolidation, and no such corporation, or association, or consolidation of corporations shall be deemed and held to be legally incorporated or consolidated until the provisions of this act shall have been complied with, and until such time they shall have no right or authority to do business within the State of Indiana, and any contract made or entered into by or with them under any pretended corporate or consolidated name shall be utterly void. In case any such pretended corporation, association or consolidation corporation shall do or attempt to do any business within the State of Indiana, without having first filed its articles of incorporation or consolidation,

or copies thereof with the secretary of State, and having paid the fee therefor, as now provided by law, the State shall, in addition to other remedies now provided by law, have the right to proceed against such pretended corporation or consolidation of corporations by suit in any court of competent jurisdiction for the recovery of any fee which would be due under the provisions of this act, the same as if their articles of incorporation or consolidation had been filed and any such court shall have the power to compel the filing of such articles. The provisions of this act shall also apply to all corporations, associations, or consolidated companies now doing business in this State, and which have heretofore entered into articles of incorporation, or consolidation, but have failed, or refused, to file the same, or copies thereof, as required by the act of March 9, 1891, of which this is amendatory, and to pay the fees required by law.

§ 3425. Corporations shall, where no other provision is specially made, be capable, in their corporate name, to sue and be sued; to have a common seal, which they may alter at pleasure; to elect, in such manner as they shall determine, all necessary officers, fix their compensation, and define their duties; to make necessary by-laws; determine the manner of calling and conducting meetings, the number that shall constitute a quorum, the number of shares that shall entitle the members to one or more votes; (Provided, Each stockholder shall have one vote for each share owned and held by him for ten days previous to the meeting of the corporation); the mode of voting by proxy; the payment of assessments, and the mode of selling shares for the non-payment of assessments; and the tenure of office of the several officers.

See Code of Civ. Pro., §§ 310-315. Service of summons on corporation. § 318. Pleadings. § 362. Stock-book is presumptive evidence of its contents. § 3433. Corporation must appear by attorney in all cases. § 973. Attachment and garnishment. §§ 945, 970-972. Criminal proceeding against corporation. §§ 1754, 1970. Suits conducted after dissolution. § 3429. Failure to pay judgment. § 3439. Suits by foreign corporation, requisites. § 3453 et seq. Vacancies in office, filling of. § 3428. Election and number of directors. §§ 3447, 3448. Officers not to act as notaries. § 8041. Notice of first meeting. § 3427.

[The declaration in a suit brought in corporate name need not aver plaintiffs to be a corporation. *Harris v. Mfg. Co.*, 4 Blackf. 267; *Heaston v. R. R. Co.*, 16 Ind. 275; *State v. Stout*, 61 id. 144; *Mackenzie v. Board*, 72 id. 189; *Smythe v. Scott*, 124 id. 123; s. c., 24 N. E. Rep. 685. The name under which action is prosecuted imports a corporation. *Id.* What are sufficient averments to show plaintiff to be a corporation. *Traber v. Bright*, 32 Ind. 67. A default, or answer in denial of the complaint, admits plaintiff's capacity to sue. *Heaston v. R. R. Co.*, supra; *Jones v. Foundry Co.*, 14 Ind. 89; *Board v. Bright*, 18 id. 93. And if the answer denies the existence of a corporation which is shown to have

once existed, it must particularly set forth the manner in which the corporate powers ceased. *Heaston v. R. R. Co.*, supra; (*Morgan v. Ins. Co.*, 3 Ind. 285, overruled on this point.) A plea to a suit by a corporation, stating that it had been dissolved by the acts of its members, without showing cause or manner of dissolution, is sufficient. *Harris v. Mfg. Co.*, supra. And in an action against a corporation it is not necessary to aver that defendant is a legally organized corporation. *Road Co. v. Pennington*, 62 Ind. 175.

If suit is brought against a defendant by name implying a corporation it will be presumed that defendant is a corporation. *Express Co. v. Hill*, 3 Ind. 157; *Sun Co. v. Horrell*, 53 id. 527. And if such defendant forms an issue by general denial and goes to trial, it is not necessary for plaintiff to introduce any evidence of existence of the corporation. *Express Co. v. Hill*, supra. When plaintiff corporation must prove its existence and general denial will put such existence in issue. *Wert v. Turnpike Co.*, 19 Ind. 242. Nul tiel corporation is a good defense, when. Id.

A de facto corporation can sue and be sued; and a party who contracts with such corporation, is estopped, in a suit on such contract, from denying such organization at the date of the contract. *Heaston v. R. R. Co.*, supra; *Jones v. Foundry Co.*, supra; *Board v. Bright*, supra; *Beatty v. Agr. Soc.*, 56 Ind. 91; *Mackenzie v. Board*, supra. And until statutory requirements to organize a corporation have been complied with, a subscriber to the articles of association is not estopped to deny existence of corporation. *P. & M. Co. v. Herkimer*, 46 Ind. 142.

A demurrer to a complaint for want of facts does not raise question as to existence of plaintiff as a corporation. *Wiles v. Trustees*, 63 Ind. 205. Proper mode of raising question is by nul tiel corporation. *Beatty v. Agr. Soc.*, 56 Ind. 91. And burden is then cast on plaintiff to prove its corporate existence. *Mining Co. v. Herkimer*, 46 Ind. 142.

Stockholder may bring suit in favor of a corporation when the corporation refuses to do so. *Carter v. Glass Co.*, 85 Ind. 180.

Stockholders cannot sue for the conversion of corporate property. *Toulson v. Bricklayers' Union*, 87 Ind. 308.

A member of a corporation whose rights are denied may sue to have such rights established. *Fire Co. v. Barnheisel*, 92 Ind. 88.

The use of corporate franchises for fifteen years will bar an action to test validity of organization. *State v. Gordon*, 87 Ind. 171.

Where charter does not require acts of corporation to be evidenced by its seal, it is not requisite that they should be thus evidenced. *Hamilton v. R. R. Co.*, 9 Ind. 369; *Trustees v. Johnson*, 53 Ind. 273.

If no expressed power to execute bills and notes be given in charter, corporation may make only such as may be necessary or proper in carrying through the purposes of its business. *Smead v. R. R. Co.*, 11 Ind. 104.

Notes executed through abuse of corporate powers may be good in hands of bona fide holders. Id.

A corporation has power to take notes to secure indebtedness within scope of their corporate undertaking; and power to take a note implies the power to assign it. *Hardy v. Merryweather*, 14 Ind. 205.

Corporations have such powers as are especially granted, and all others necessary for purpose of carrying into effect the powers expressly granted. *Bridge Co. v. Hendrick*, 18 Ind. 11; *Board v. Ry. Co.*, 47 id. 497; *Vanarsdall v. State*, 65 id. 176.

One who deals with a corporation is presumed to know the limitations of its authority, and hence is estopped to plead its want of authority. *Voris v. B. & L. Assn.*, 50 N. E. Rep. 779.

One who receives benefits of a contract, when sued thereon, held not permitted to claim that the contract was ultra vires as to the other party. Id.

The contracts of a corporation must relate to its business, and must be made by directors or

an authorized agent. *Road Co. v. Slaughter*, 33 Ind. 185.

Corporations have no power to execute contracts that are foreign to purposes for which they were created. *Board v. Ry. Co.*, 50 Ind. 80; *Turnpike Co. v. Board*, 72 Ind. 226.

Where charter prescribes when and in what manner contract may be made, contracts made in violation thereof are void. *Leonard v. Ins. Co.*, 97 Ind. 290.

In absence of any restraints, corporation may borrow money and execute contracts to attain its legitimate objects, the same as natural persons. *Wright v. Hughes*, 119 Ind. 324; s. c., 21 N. E. Rep. 907.

Mortgage executed by corporation to secure money to be used in business in which corporation has no power to engage may be enforced if corporation is not prohibited by statute from making such contract and mortgagee had no complicity in the unauthorized transaction. Id.

A contract may be inserted in articles of incorporation that will be binding on the members. *Furniture Co. v. Nees*, 63 Ind. 245.

Contracts of a corporation must purport on their face to be the contracts of a corporation. *Prather v. Ross*, 17 Ind. 495; *Williams v. Bank*, 83 Ind. 237.

As to when acts of agents in executing contracts bind corporations, see *Tonsey v. Taw*, 19 Ind. 212; *Goff v. Theis*, 33 id. 307; *Road Co. v. Brancigan*, 40 id. 361; *Pearse v. Welborn*, 42 id. 331; *Trustees v. Johnson*, 53 id. 273; *Township v. Andrews*, 56 id. 157; *Williams v. Bank*, 83 id. 237; *School Town v. Kendall*, 72 id. 91; *Mackenzie v. Board*, 118; *R. R. Co. v. Davis*, 20 id. 6.

The power to make by-laws resides in the members of a corporation at large, where there is no law or usage to the contrary. *Road Co. v. Wyson*, 51 Ind. 4. By-law of gravel road company held invalid. Id.

A corporation may be estopped to deny a contract which it had no authority to make. *Board v. Ry. Co.*, 47 Ind. 497.

Where charter of a corporation does not require that appointment of an agent or making of a contract shall be by written instrument, it may be by parol. *Hamilton v. R. R. Co.*, 9 Ind. 350.

A corporation is liable for an intentional trespass committed by its agent, though the directors were not aware of it. *Cole v. Reitz*, 43 N. E. Rep. 46.

An officer is not entitled to compensation in the absence of a governing by-law of contract to which his own vote was not essential. *Blue v. Capitol Bank*, 43 N. E. Rep. 653.]

§ 3426. Shares shall be numbered in progressive order, beginning at number one, and every stockholder shall have a certificate, under the seal of the corporation, signed by the treasurer, certifying his property in such shares.

[Shares of capital stock in a private corporation may be reached by attachment. *Quarl v. Abbott*, 102 Ind. 233; s. c., 1 N. E. Rep. 476.

Where by-laws of a corporation provide for forfeiture of stock on non-payment of dues, directors may, when authorized, waive forfeiture, and, when not so authorized, general principles of law would authorize them to do so. *Bldg. Assn. v. Black*, 136 Ind. 541; s. c., 35 N. E. Rep. 829.

Receiving and accepting delinquent dues would constitute such a waiver. Id.]

§ 3427. The first meeting of all corporations shall, unless otherwise provided for, be called by a notice signed by three or more members, setting forth the time, place and purposes of the meeting, and shall, ten days at least before the meeting, be delivered to each member, or published in some newspaper of the county where the corporation

## Liability of stockholders; stock-book; expiration — Stat., §§ 3428-3437.

may be established, or, if none, then in some newspaper in this State nearest thereto.

§ 3428. Such corporation may elect officers, fill vacancies, and do other business properly before them.

§ 3429. All corporations whose charters shall expire by limitation, forfeiture, or otherwise, shall, nevertheless, be continued bodies corporate for three years after the time they would have been so dissolved, for the purpose of prosecuting and defending suits to which they are a party, and to enable them to settle, dispose of, and convey their property, and divide the capital stock, but not to continue the business for which such corporations were established.

[Such suits to be conducted in name of defunct body. *Herron v. Vance*, 17 Ind. 595.]

Under this section a bank would have three years from date of dissolution in which to sue and be sued, to settle, dispose of and convey its property, and divide the capital stock, but not to continue a banking business. *Cunningham v. Clark*, 24 Ind. 7; *Conwell v. Pattison*, 28 Ind. 509.

Section applies to building associations. *Eigenman v. B. & L. Assn.*, 79 Ind. 41.]

§ 3430. If any part of the capital stock of such company shall be withdrawn and refunded to the stockholders before the payment of all the debts of the company, all the stockholders of such company shall be jointly and severally liable for the payment of such debts.

[A stockholder is not liable for corporation debts when the stock is fully paid up. *Gainey v. Gilson*, 48 N. E. Rep. 633.]

§ 3431. No person holding stock in any such company as executor, administrator, guardian, or trustee, or as collateral security, shall be personally subject to any liability as stockholder of such company; but the estate and funds in the hands of such executor, administrator, guardian or trustees, shall be liable therefor, and the person pledging his stock as aforesaid shall be considered as holding the same.

§ 3432. Every such executor, administrator, guardian or trustee shall represent the share of stock in his hands, and vote as a stockholder; and every person who shall pledge his stock as aforesaid, may, nevertheless, represent the same at such meetings, and vote accordingly.

§ 3433. A book shall be kept by the corporation, at their office or principal place of business, containing the names of stockholders thereof, alphabetically arranged, showing their respective places of residence and number of shares held by them severally, and the time they became owners of the same; which book shall, at all business hours of the company, be subject to the inspection of creditors, stockholders, or their representatives, who shall be permitted to take extracts from the same. Such book shall be presumptive evidence in favor of the plaintiff

of the facts therein stated in any suit or proceeding against such company or stockholder thereof.

§ 3434. Any company failing to keep the book to make the entries required, or to exhibit the same as directed in the preceding section, shall forfeit to the injured party a penalty of fifty dollars for every such instance of refusal or failure, and all damages resulting therefrom, and, in addition, shall pay to the State of Indiana the sum of fifty dollars for every day of such failure, to be sued for and recovered in the name of the State by the prosecuting attorney of the district or county in which such corporation is situate; and when recovered shall be paid into the treasury of the proper county for the use of common schools.

[In an action to recover by penalty, the complaint must show that officers upon whom demand was made had notice that person making demand was entitled to the inspection. *Williams v. Road Co.*, 45 Ind. 170.]

§ 3435. When the charter of any corporation shall expire, the circuit court of the county in which such corporation has its principal place of business, on application of any creditor, stockholder, or member thereof, within the said three years, may appoint one or more persons to be receivers or trustees of such corporation, to take charge of the estate and effects, collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits for the purposes aforesaid, and to appoint agents, and do all other acts which might be done by such corporation, if in being, necessary for the final settlement of the business of the corporation; and the power of such receivers may be continued beyond the said three years, and as long as the court shall think necessary, for the purposes aforesaid.

[Receiver appointed under above section may sue in his own name. *Manlove v. Burger*, 38 Ind. 211.]

Section construed. *Bldg. Assn. v. Black*, 139 Ind. 544; s. c., 35 N. E. Rep. 829.]

§ 3436. The said court shall have jurisdiction of such application and of all questions arising in the proceedings thereon, and may make such orders, injunctions, and decrees as justice and equity shall require.

§ 3437. The said receivers shall pay all debts due from the corporation, if the funds in their hands be sufficient therefor; other; wise, shall distribute the same ratably among all the creditors proving their debts, as directed by an order or decree of the court for that purpose; and if there be any balance remaining after the payment of said debts, the receivers shall distribute and pay the same to and among those justly entitled thereto, as having been stockholders

or members of the corporation, or their legal representatives.

§ 3438. If there be no person entitled to receive the same, or any part thereof, it shall be paid into the State treasury, to be disposed of in such manner as the general assembly may direct.

§ 3439. Whenever any judgment against any corporation other than banking shall have remained unpaid for the space of one year after the rendition thereof, and execution thereon is not stayed by appeal or supersedeas, the circuit court of the proper county shall have power to declare the franchise of such corporation forfeited, and appoint a receiver, who shall give bond, and reduce the assets of such corporation to possession and pay the debts thereof, under the same rules prescribed for the government of administrators.

[Unless authorized by statute or by order of court appointing him, receiver can sue only in the name of person in whom right of action existed before his appointment. Therefore complaint by receiver appointed in proceedings supplementary to execution must aver that the court appointing him authorized him to bring actions in his own name, *Garber v. Kent*, 70 Ind. 428. A court of equity has no power, independently of statute, to dissolve an insolvent corporation. *Iron Hall v. Baker*, 134 Ind. 293; s. c., 33 N. E. Rep. 1128.

What is sufficient ground for appointment of receiver. *Id.*

A stockholder is bound to apply to directors or the corporation itself for redress, before applying to court for appointment of receiver. *Id.*]

§ 3440. The services of such receiver shall be paid by an allowance, to be made by such court out of such assets; and the surplus left after the payment of debts and costs shall be distributed among the stockholders, pro rata.

[Corporations, before the Revised Statutes of 1852 took effect, were only subject to remedies for non-payment of debts to which natural persons were. Therefore the provisions of the two preceding sections do not apply to corporations which were in existence before they took effect. *Turnpike Co. v. Holthouse*, 7 Ind. 60.

Court has power at any time to discharge receiver and restore corporation to its original management. *Iron Hall v. Baker*, 134 Ind. 293; s. c., 33 N. E. Rep. 1128.]

§ 3441. The dues from all private corporations which have been or may be organized under the general laws and under the present Constitution of this State, other than banking and road corporations, and other than those where security has already been provided, shall be secured in the manner hereinafter provided.

See Const., art. XI, § 213.

[Above section does not apply to corporations organized for manufacturing purposes. *Wood v. Harrison*, 50 Ind. 489; *Gilbert v. Coal & Iron Co.*, 62 id. 522.]

§ 3442. All companies organized under the laws of this State heretofore incorporated

or hereafter incorporated within this State, shall have full power and authority from time to time to borrow money at any rate of interest not exceeding the legal rate of interest allowed by law of the State where the loans may be negotiated or money borrowed, to be agreed upon between the parties, for the purpose of enabling such company to purchase real estate, erect buildings with all necessary machinery and fixtures and necessary funds to carry on the improvements and operations of such company; and as an evidence of such loans or for the purchase of materials and necessary improvements, on time, may issue its corporate bonds or promissory notes, and secure the repayment thereof, with the interest which shall accrue, may mortgage its franchise, real estate, income and all other property, and may, by its president or other officers or agents, sell, dispose or negotiate such bonds, notes or the stock of such company, at such time and at such places, either within or without this State, and at such rates and for such prices as in the opinion of the company will best advance its interest.

[A turnpike company may mortgage its road, or any part of it, to secure payment of money due a contractor for constructing the road. *Turnpike Co. v. McCormick*, 45 Ind. 239.

Release of mortgage by president, held ratified. *Smith v. Wells Mfg. Co.*, 46 N. E. Rep. 775.

Instruction by a majority of a corporation to the president, held to authorize release of the mortgage. *Id.*]

§ 3443. And if such bonds, notes, or stock are thus sold at a discount, such sale shall be as valid and binding, in every respect, as if sold at their par value. And every such company is hereby authorized to confer upon the holder of any bond or note, sold or issued as aforesaid, the right to convert the principal thereof, at any time until paid, into the stock of such company.

§ 3444. All such contracts, bonds, notes, and mortgages, made in pursuance of the foregoing provisions, shall be as valid and binding upon the parties thereto as if the same had been originally embodied in the several acts incorporating such companies: Provided, however, That this act shall not be so construed as to repeal, change, or modify any similar provisions contained in any act incorporating and railroad company or any act amendatory thereof, or to restrict the provisions of any act of incorporation of any railroad company or any act amendatory thereof, which has enlarged rights, grants, or privileges.

§ 3445. That each and every private corporation now existing, and which was created and organized by and under a special act of charter passed before the present Constitution of the State took effect, shall be and continue a corporation thirty years after the passage of this act: Provided, That where the special act by and under which

Change of place of business; directors; capital stock — Stat., §§ 3446-3451.

any such corporation was created, or any amendment of or supplement to such act gives the right to continue and exist for a longer period or perpetually, such corporation shall continue for such longer period or perpetually, as so given. This act shall only apply to corporations created before and existing before the first day of November, 1851, and all laws and parts of laws creating any such corporation, and all amendments and acts supplemental thereto, so far as the same are in conflict with this act, are repealed as to all such corporations as accept the provisions of this act.

§ 3446. That in every case where the law creating such corporations designates the town or city where such corporation shall be established, the corporation may, by resolution of its directors, change its place of business from such town or city to any town or city in this State. The meeting of the board of directors for this purpose may be held at the town or city mentioned in charter of the corporation, or held at the town or city to which the change is to be made. In cases where any such change of location has heretofore been made or attempted it shall be lawful for the board of directors in their resolution for a change of location under the act to refer to and recite the time and place and terms of the first resolution or order of the board ordering the change of location, and to reaffirm such first resolution or order, and such change shall be good and effectual from the date of said first resolution or order.

§ 3447. That the directors of any such corporation shall be elected in the manner and at the time and place now provided for by the charter of such corporation, except where there shall be or has been (a) change of its place of business. Then in such case the election of directors shall be at the place to which such change shall have been made, and no act of any board of directors done shall be invalid by reason of any informality or irregularity in time, place and manner of their election. At all elections of directors and at all other meetings of the directors each stockholder shall have one vote for each share of stock owned by him.

Directors of mining, manufacturing, etc., corporations. §§ 5054, 5055.

[Information in quo warranto held proper remedy to contest election of directors, where two factions of stockholders had elected two sets of directors. *Caramel, etc., Co. v. Small*, 47 N. E. Rep. 11.]

§ 3448. The number of directors may be increased or reduced by resolution of the board of directors to any number not exceeding thirteen, and when heretofore any change in the number of directors has been made or attempted by any resolution or by any amendment or supplemental act it shall be lawful for the directors acting under this law to reaffirm or adopt such change or at-

tempted change, and such change of the number of directors shall be deemed good and effectual from the time first made, or attempted to be made, and all acts done by such increased board of directors shall be legal and valid.

§ 3449. The board of directors may by a vote of two-thirds of its members reduce or increase the amount required to constitute a share of stock, and the directors may in the same manner increase or diminish the capital stock, and where before the passage of this act there has been a change of the amount required to constitute a share of stock, or where there has been increase or decrease of the capital stock made or attempted by any resolution of the board, or by any amendment or supplemental act, the board of directors may by a resolution adopted by a vote of two-thirds of the directors reaffirm such increase or decrease, or attempted increase or decrease of the capital stock, and reaffirm the change in amount required to make a share of capital stock, and such change in the amount required to make a share of such increase or decrease of the capital stock shall be legal and valid from the date when first made or attempted to be made.

§ 3450. Any insurance company having power to insure property against loss or damage by fire, and loan money, and power to acquire, hold, possess, use, occupy and enjoy real estate, may have and hold real estate to any amount not exceeding five hundred thousand dollars at any one time, and may receive, retain and contract for the same rate of interest as is allowed by the general laws of this State.

§ 3451. In case of insolvency or insufficiency of effects of a corporation to pay the debts against it, each of the stockholders shall be liable in an amount equal to the amount of his stock at the time the debts were contracted and no further, after the assets of the corporation are exhausted: Provided, That the directors, with the assent of the stockholders, may increase this liability to any amount not exceeding three times the amount of stock held by each stockholder. Any corporation desiring to avail itself of the provisions of this act, or of any part thereof, may do so within thirty days after the passage of this act, and shall do so by resolution of the board of directors showing the provisions adopted, which resolution shall be filed in the office of the secretary of State, and accompanying such resolution, or as a preamble thereto, there shall be a statement giving the title and date of the act creating said corporation, and also giving the title and date of act amendatory or supplemental to the first mentioned act.

[An insolvent corporation may prefer creditors. *Levering v. Bimel*, 45 N. E. Rep. 775.

Corporate assets are not a trust fund before a corporation is placed under control of the court. *Id.*

That preferences by an insolvent corporation inure to the benefit of some directors, held not to render them invalid. *Id.*

When a corporation borrowed money and directed its officers to pay over the same to another creditor, their authority terminated by the appointment of a receiver for said corporation. *Bank v. Doyetall Co.*, 42 N. E. Rep. 924.

An insolvent corporation may assign accounts to its directors to reimburse them on account of a liability incurred for the corporation. *Id.*

A creditor cannot maintain a suit to reach assets withheld from a corporation in charge of a receiver unless the receiver refuses to sue. *Id.*

§ 3452. That any private corporation or company created and existing at and before the first day of November, A. D. 1850, may, by its board of its directors, as often as deemed desirable, adopt a new name for the corporation or company, by resolution duly entered upon its records, and in so doing may select any name agreed upon by said board, and after any such change of name it shall be and continue the same identical corporation or company as it was before any such change of name was adopted, and may be sued in its original name, or in any name so adopted. And any such corporation or company may avail itself of the provisions of this act within thirty (30) days after the passage hereof, and which shall be done by resolution of its board of directors, showing the provision adopted and filing a copy thereof in the office of the secretary of State.

Change of name. §§ 1012-1016.

## CHAPTER XXII.

### Corporations — Foreign.

Sec. 3453. Agent must file authority.

3454. Consent to be sued here.

3455. Service on agent good.

3456. Prerequisite to business.

3457. "Agent" defined.

3458. Who not agents.

3459. Penalty on agent.

3460. Forfeiture.

3461. Condition precedent.

§ 3453. Agents of corporations not incorporated or organized in this State, before entering upon the duties of their agency in this State, shall deposit in the clerk's office of the county where they propose doing business therefor the power of attorney, commission, appointment, or other authority under or by virtue of which they act as agents.

Actions against foreign corporation, where commenced. § 315.

["Foreign corporation" defined. *Daly v. Ins. Co.*, 64 Ind. 1.

Contracts made by agents of foreign corporations not complying with this section are not void, but their enforcement is prohibited until the requirements of this section have been complied with. *Mach. Co. v. Caldwell*, 51 Ind. 271; *Mach. Co. v. Hatfield*, 58 id. 187; *Mfg. Co. v. Brown*, 61 id. 548; *Wiestling v. Warthin*, 1 Ind. App. 217; s. c., 27 N. E. Rep. 576.

Failure to comply with this section does not render a mortgage given to corporation void but merely suspends right to foreclose it until the

provisions shall have been complied with. *Daly v. Ins. Co.*, supra.

A note given to corporation is not void, but its collection is suspended until this section has been complied with. *Ins. Co. v. Wellman*, 69 Ind. 413.

This State has the constitutional right to prescribe terms on which corporations organized in other States may transact business in this State. *Ins. Co. v. Harrah*, 47 Ind. 236.

While corporations are recognized as citizens, for some purposes, of the State of their creation, they are not citizens within the meaning of that clause of the United States Constitution which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; they exercise privileges only by consent and comity. *Id.* It will be presumed that a foreign corporation has complied with this statute until contrary is shown. *Sprague v. Cutler Co.*, 106 Ind. 244; s. c., 6 N. E. Rep. 335.

Objection that there has not been such compliance must be made how. *Elsten v. Piggott*, 34 Ind. 14.

This section applies only to such agents as propose to transact, within this State, the business in which the corporation is engaged, and not to persons who are engaged in appointing agents to do its business. *Morgan v. White*, 101 Ind. 14.

It relates to foreign corporations in general, and has not application to such corporations as are under special regulations. *Rehm v. Ins. & Sav. Inst.*, 125 Ind. 135; s. c., 25 N. E. Rep. 173.

It is applicable to foreign corporations dealing in articles under letters-patent issued by the United States. *Agr. Works v. Work*, 60 Ind. 253; *Hockett v. State*, 105 id. 250; s. c., 5 N. E. Rep. 178; *Brechbill v. Randall*, 102 Ind. 528.

Where complaint of a foreign corporation is silent on the subject, it will be presumed that it has complied with sections 3453 and 3454, and demurrer for want of legal capacity to sue is bad. *Sprague v. Lumber Co.*, 106 Ind. 242; s. c., 6 N. E. Rep. 335; *Cassaday v. Ins. Co.*, 72 Ind. 95.

A finding in an action by a foreign corporation construed, and held to show that the corporation had not complied with the laws, so as to be entitled to do business in this State. *Maine Guaranty Co. v. Cox*, Ind. Supp. 932.]

§ 3454. Said agents shall procure from such corporations, and file with the clerk of the circuit court of the county where they propose doing business, before commencing the duties thereof, a duly authenticated order, resolution, or other sufficient authority of the board of directors or managers of such corporations, authorizing citizens or residents of this State having a claim or demand against such corporation arising out of any transaction in this State with such agents, to sue for and maintain an action in respect to the same in any court of this State of competent jurisdiction, and further authorizing service of process in such action on such agent to be valid service on such corporation, and that such service shall authorize judgment and all other proceedings against such corporation.

[Section not applicable to foreign corporations that are under special regulations. *Rehm v. Ins. & Sav. Inst.*, 125 Ind. 135; s. c., 25 N. E. Rep. 173.

Above section applies only to suits arising out of business transacted within this State. *Ins. Co. v. Black*, 80 Ind. 513. And only to actions on contract and not replevin suits. *Smith v. Little*, 67 Ind. 549.]

§ 3455. The service of process on such agents, in actions commenced against such

## Foreign corporations — Stat., §§ 3456-3461, 5051.

corporation, shall be deemed a service on the corporation, and shall authorize the same proceedings as in other cases.

[Service on such agents is not authorized when suit arises on contract made out of the State. *Ins. Co. v. Black*, 80 Ind. 513.]

§ 3456. Such foreign corporations shall not enforce, in any court of this State, any contracts made by their agents or by persons assuming to act as their agents, before a compliance by such agents or persons acting as such with the provisions of sections 1 and 2 of this act.

[Argument of counsel held to be too meager to advise the court of incapacity of non-resident corporation to sue. Sufficiency of complaint. *Allen v. Ins. Co.*, 136 Ind. 698; s. c., 36 N. E. Rep. 515.

In suit upon note and mortgage made to a foreign corporation, for a loan of money, an answer in abatement, that corporation had not complied with sections 3453-3456 before doing business in this State, is bad on demurrer, it not appearing where the loan was made. *Finch v. Ins. Co.*, 87 Ind. 302.

Receivers of a foreign corporation cannot sue to enforce a contract unless the corporation has complied with the foregoing statute. *Wiestling v. Warthin*, 1 Ind. App. 217; s. c., 27 N. E. Rep. 576. See also notes to §§ 3453, 3454.]

§ 3457. Any person who shall, directly or indirectly, receive or transmit money or other valuable thing to or for the use of such corporations, or who shall in any manner make, or cause to be made, any contract, or transact any business for or on account of any such foreign corporation, shall be deemed an agent of such corporation, and be subject to the provisions of this act relating to agents of foreign corporations.

§ 3458. The foregoing section shall not apply to persons acting as agents for foreign corporations for a special or temporary purpose or for purposes not within the ordinary business of such corporations, nor shall it apply to attorneys at law, as such.

§ 3459. Any person acting as agent of a foreign corporation as aforesaid, neglecting or refusing to comply with the foregoing provisions as to agents, shall, upon presentment or indictment, be fined in any sum not less than fifty dollars.

§ 3460. Every foreign corporation now doing or transacting, or that shall hereafter do or transact, any business in this State, or acquire any right, title, interest in, or lien upon real estate in this State, that shall transfer or cause to be transferred from any court of this State to any court of the United States, save by regular course of appeal, after trial in the State courts, any action commenced by or against such corporation in any court of this State, by or against any citizen or resident thereof; or that shall commence in any court of the United States in this State, on any contract made in this State or liability accrued therein, any suit or action against any citizen or resident of

the State of Indiana,—shall thereby forfeit all right and authority to do or transact business in this State or hold real property or liens thereon; and all contracts between such corporations and citizens or residents of this State, made after the passage of this act, shall be rendered void as in favor of such corporation, but enforceable by such citizen at his election.

§ 3461. The provisions of this act are hereby made conditions upon which such corporations may be authorized to do business in this State or hold titles to or liens on real estate therein.

[A foreign corporation obtaining judgment in this State may purchase lands at a sale under such judgment although it has not complied with sections 3459, 3461. *Elston v. Piggott*, 94 Ind. 14.]

## CHAPTER XXXVIII.

## Corporations — Manufacturing and Mining Companies.

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## Corporations.

§ 5051. Whenever three or more persons may desire to form a company to carry on any kind of manufacturing, mining, mechanical or chemical business, or to furnish motive power to carry on such business; or to supply any city or village with water; or to form union stock-yards and transit companies, and operating, maintaining and transacting the business incident to such companies; or to form grain-elevator com-

panies, and constructing, maintaining and operating elevators, and transacting the business incident thereto; or to form companies for the purpose of buying and selling dry goods, carpets, boots and shoes, millinery goods, fancy goods or jewelry, in connection with the manufacture of such goods and articles, into any articles for which they are suitable, and for the sale of such articles, when they are so manufactured they shall make, sign and acknowledge, before some officer capable to take acknowledgment of deeds, a certificate in writing, which shall state the corporate name adopted by the company, the object of its formation, the amount of capital stock, the term of its existence (not, however, to exceed fifty years), the number of directors and their names who shall manage the affairs of such company for the first year, and the name of the town and county in which its operations are to be carried on, and file the same in the office of the recorder of such county, which shall be placed upon the record, and a duplicate thereof in the office of the secretary of State.

General Corporation Law, § 3423 et seq.

[A water-works company is not a manufacturing company within meaning of above section. *Kent v. Water-Works*, 62 Ind. 63.]

But, complaint sufficiently shows that water-works company was organized under "Manufacturing and Mining Associations Act," when. *Crow v. Brown*, 134 Ind. 287; s. c., 33 N. E. Rep. 1126.

A manufacturing corporation is not authorized to engage in the business of private warehouseman. *Bank v. Whitehead*, 49 N. E. Rep. 592.

An association which does business after an unsuccessful attempt to incorporate is a partnership, composed not only of the directors, but of the subscribers to the articles. *Coleman v. Coleman*, 78 Ind. 344.

Necessary steps to be taken to create corporation under above section. *F. & M. Co. v. Herkimer*, 46 Ind. 142.

A mere signing of articles of association is not sufficient compliance with above section. In order to make them valid and effective all should sign such articles; otherwise he does not become a stockholder, and is not bound by his subscription. *Coppage v. Hutton*, 124 Ind. 401; s. c., 24 N. E. Rep. 112.

The fact that articles of incorporation mention a purpose not within the statute under which corporation is organized, does not vitiate the incorporation. *Stick v. Citizens' Enterprise Co.*, 44 N. E. Rep. 48.

A subscriber to an existing corporation need not acknowledge the articles of incorporation. *Id.*]

§ 5052. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, and, by their corporate name, may take, hold, and convey real estate necessary to carry on the operations named in such certificate.

§ 5053. All incorporated manufacturing companies, in actual operation and carrying on business in the State of Indiana, may take, hold, and convey so much real estate as may be necessary to carry on their busi-

ness, and may also take and hold such real estate as may be mortgaged to such companies to secure any debt, or may be taken in payment of any indebtedness previously contracted, or may be purchased on judgments, decrees, or mortgages obtained or made for such debts; and all such conveyances of land, whether made heretofore or hereafter, are hereby ratified and declared to be valid.

[If title to real estate came through a manufacturing company, it will be presumed that such company had power to convey the same. *Gabe v. Root*, 93 Ind. 256.]

Sale and delivery of certificate of stock, without transfer on corporation books, vests equitable title only in the purchaser. *Bruce v. Smith*, 44 Ind. 1.

Mandamus will lie to compel proper officers to transfer, on books of corporation, stock that has been duly assigned by a stockholder. *Turnpike Co. v. Bailla*, 45 Ind. 1.

A mandamus will not lie where petitioner's claim rests merely on the equitable title. *Turnpike Co. v. State*, 119 Ind. 382; s. c., 20 N. E. Rep. 421. Presumption in absence of proof is that stock was transferred in accordance with the by-laws. *Coal Co. v. Paper Co.*, 129 Ind. 73; s. c., 26 N. E. Rep. 884.

Above section construed. *Id.*]

§ 5054. The business of such company shall be managed by not less than three nor more than eleven directors, who shall be stockholders therein and residents of the United States; and a majority of the directors chosen shall be a quorum. Such directors, after one year from the organization of the company, shall be elected by the stockholders annually; and the directors thus chosen, or first appointed, shall elect the president thereof.

[Directors cannot repudiate an act done by authority of stockholders. *Smith v. Wells Mfg. Co.*, 45 N. E. Rep. 775.]

A fair contract between two corporations is not invalid because they have common directors. *Evansville v. Bank*, 42 N. E. Rep. 1097.]

§ 5055. The directors of such company shall annually elect a secretary and treasurer, who shall respectively give bond, with security as shall be required by the by-laws, and be sworn to the faithful discharge of the duties assigned to each of them: Provided, That said directors may, if they deem proper, elect one person to discharge the duties of secretary and treasurer. Absent stockholders may vote by proxy, and each share of stock shall entitle the owner thereof to one vote. All officers shall serve until their successors are elected and qualified.

§ 5056. Corporations building steamboats and other vessels shall have the right to construct marine railways, and all other necessary fixtures and machinery for repairing and launching the same; and gas-light companies may lay pipes through the streets and alleys of any incorporated city or town, by repairing or making good any injury done thereto.



§ 5057. That any gas-light or water-works company in any city or town of this State shall be authorized and empowered to extend their pipes and mains beyond the corporate limits of such city or town, not to exceed a distance of five miles from the corporate limits of any such city or town, for the purpose of supplying persons or corporations with gas or water, and any such company shall be authorized and empowered to furnish and supply gas or water to any persons or corporations residing or located within five miles of the corporate limits of any such city or town.

§ 5058. The amount of capital stock shall be fixed by the company, but may be increased by a vote of the stockholders at any annual meeting, and in like manner any company which may have been incorporated in this State for any of the purposes contemplated in said act, with a fixed amount of limitation of capital, may increase its capital stock, and extend the term of its existence (not, however, to exceed fifty years from its first organization), by a vote of the stockholders at any annual meeting, and such capital stock shall be divided into shares of not more than one hundred dollars each: Provided, A certified copy of the record and proceedings of such meeting be filed in the office of the secretary of the State of Indiana within thirty days thereafter.

§ 5059. The stock of such company shall be deemed personal estate, and when fully paid in shall be transferable in such manner as the by-laws may prescribe. Such company shall not use its funds in the purchase of stock in any other corporation only upon the written consent of all the stockholders of the company desiring to purchase said stock, and also the written consent of all the stockholders of the corporation in which stock is sought to be purchased.

§ 5060. The capital stock, as fixed by such company, shall be paid into the treasury thereof, within eighteen months from the incorporation of the same, in such installments as the by-laws of the company assess and direct.

§ 5061. If the proprietor of any share shall fail to pay the sum assessed thereon for the period of thirty days after the time appointed for the payment thereof, the treasurer of the company may bring suit for the recovery of the same; or by giving three weeks' notice in a newspaper printed in the county, if any (otherwise, by posting such notices in three or more public places), may sell at public auction a sufficient number of shares of such delinquent proprietor to pay all assessments due from him, with all necessary and incidental charges; and a deed of the shares so sold shall transfer the same to the purchaser and entitle him to a certificate therefor.

[Complaint in an action on a subscription to capital stock conditioned to be valid in case a certain amount was subscribed, held sufficient.

Shick v. Citizens' Enterprise Co., Ind. App., 44 N. E. Rep. 48.

In an action by a corporation organized under the Manufacturers and Mining Act to recover a subscription made in advance of incorporation, complaint must show necessary steps to legal incorporation, 1d.

In an action on a preliminary subscription to capital stock the fact that plaintiff before incorporation made false representations as to its organization is no defense. 1d.

It is no defense to an action on a subscription to capital stock that the promoters secured subscriptions beyond the prescribed amount. 1d.

Subscriptions to capital stock, to be binding if a certain aggregate amount is subscribed, are valid. 1d.]

§ 5062. The president and directors, within thirty days after the payment of the last installment of the capital stock, shall make a certificate stating the amount of the capital so fixed and paid in; which certificate shall be signed by the president and a majority of the directors; and they shall within the said thirty days file the same for record in the office of the clerk of the circuit court in the proper county. If said capital stock shall have been increased, as provided in section 6 (§ 3857), and the last installment of such additional stock is paid in, then such officers, within the time named, shall make a like certificate, and cause it to be recorded as above.

§ 5063. Every such company may, by a vote of its stockholders, at any meeting called for that purpose, reduce the capital stock of the same. In such case, a certified copy of the vote shall, within thirty days thereafter, be filed in the office of the clerk of the circuit court in which the original certificate was filed, and the same shall, in like manner, be recorded; and also a duplicate of the same in the office of the secretary of State; and in default thereof, the directors of such company shall be jointly and severally liable for debts contracted after the said thirty days and before the record of such vote.

§ 5064. That any manufacturing, mining or other company having a capital stock, which has been or which may hereafter be organized and incorporated under any law of this State, shall have the power to create and issue shares of preferred stock in such company of not more than one hundred dollars (\$100.00) each, the aggregate amount of which shall at no time exceed double the amount of the common stock of such company.

§ 5065. At the time any such company is organized and incorporated, the incorporators thereof may in their certificate or articles of association provide for the issuance of such preferred stock by such company, by stating the amount of preferred stock proposed to be issued and the number of shares into which it is to be divided, and when so provided for in said certificate or articles of association said company shall be duly authorized and have full power to

create and issue certificates for shares of such preferred stock.

§ 5066. Any such company already organized desiring to create and issue shares of preferred stock in such company may do so at any annual, regular or special meeting of its stockholders by the unanimous vote of the holders of its common stock, and such company may at any such meeting or any subsequent meeting of its stockholders, by a vote of the holders of a majority of its common stock, authorize and empower its board of directors to dispose of and issue such preferred stock upon such terms and conditions as said board of directors may deem best, or as such company may prescribe; and when so authorized the validity of the issuance and the disposition made of such preferred stock by said directors shall in all things be binding and conclusive upon such company. Within thirty days after the time such company has authorized the issuance of preferred stock as provided in this section, it shall cause to be filed with the secretary of State its certificate in writing, signed by its president and attested by its secretary, duly acknowledged, certifying that the issuance of preferred stock has been authorized by such company, the amount of such preferred stock, the number of shares into which it shall be divided and the amount of each share.

§ 5067. Such preferred stock shall not at any time exceed double the amount of the common stock of such company actually subscribed or issued, and it shall be subject to redemption at par at such time or times, and upon such terms and conditions as shall be expressed in the certificates thereof, and the holders of such preferred stock shall be entitled to receive, and the said company shall be bound to pay thereon such semi-annual sum or dividend as may be expressed in the certificates, not exceeding four per centum, before any dividend shall be set aside or paid on the common stock of such company, and in no event shall the holders of such preferred stock be individually or personally liable for the debts, or other liabilities of such company, but in case of insolvency, or upon the dissolution of such company, such debts or other liabilities shall be paid in preference to such preferred stock. Such preferred stock, however, shall at all times have priority in payment out of the assets of such company over the common stock thereof, for the full face value, together with all arrearages of interest or dividends due thereon.

§ 5068. Such preferred stock shall not be voted at any meeting of such company, nor shall the holders thereof, as such, have any voice in the management of the affairs of such company, excepting, however, that such company shall not have authority to convey its real estate or mortgage any of its property without the written consent of the holders of a majority of the shares of such

preferred stock; nor shall such company without such consent declare any dividend upon its common stock that will impair its capital. Such preferred stock shall not entitle the holders thereof to any interest in the assets of such company beyond the par or face value of such preferred stock, together with all arrearages of interest or dividends due thereon.

§ 5069. When any such company has redeemed the preferred stock issued by it under the provisions of this act, its directors shall within thirty days thereafter cause to be filed with the secretary of State their certificate in writing, as directors of such company duly acknowledged, certifying that such preferred stock has been redeemed; and in default thereof, the directors of such company shall be jointly and severally liable for all debts and liabilities of such company contracted after said thirty days and before said certificate is filed.

§ 5070. The provisions of this act shall not apply to any company which by any existing law is authorized to issue preferred stock, or which may hereafter be specially authorized so to do.

§ 5071. Every such company shall, annually, within twenty days from the first day of January, make a report, which such company shall cause to be published in some newspaper printed in the county, if any (otherwise, in this State, nearest thereto), which shall state the amount of capital, the amount of assessments made and actually paid in, and the amount of existing debts; which report shall be signed by the president and a majority of the directors, and shall be verified by the oaths of the president and such directors and secretary.

§ 5072. The word "annually," as used in the preceding section, shall be construed to mean once a year, after such company has been doing business at least twelve months.

§ 5073. If any certificate or report made or public notice given by the officers of any such company, as required by this act, shall be false in any material representation, or if they shall fail to give such notice or make such report, and any person or persons shall be misled or deceived by such false report or certificate or on account of such failure to make such report, and damaged thereby, then all the officers who shall sign the same, knowing it to be false, or fail to give the notice or make reports as aforesaid, shall be jointly and severally liable for all damages resulting from such failure on their part while they are stockholders in such company.

[See *Traber v. Bright*, 32 Ind. 69. Directors of an incorporated manufacturing company are officers within the meaning of above section. *Gaffe v. Theis*, 33 Ind. 307.

In an action under this section, complaint must allege the purpose for which corporation was organized and manner in which plaintiff was misled and deceived by the misconduct of directors, and that directors sued constituted at least

## Manufacturing, etc., corporations — Stat., §§ 5074-5081.

a majority of such directors. *Niles v. Dodge*, 70 Ind. 147.  
 Complaint held to state a cause of action under above section. *Clow v. Brown*, 49 N. E. Rep. 1057.]

§ 5074. When any of the officers of such corporation shall be liable, by the provisions of this act, to pay the debt of such company, any person to whom they shall be so liable may have an action against such officer; and the declaration or statement, in such action, shall specify the claim against the company, and the ground upon which the plaintiff charges the defendant personally; and such action may be brought although suit be pending against the company for the same claim or demand, and both be prosecuted until the plaintiff shall have recovered his debt with costs and charges.

§ 5075. If the directors of any such company shall declare and pay a dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, knowing such company to be insolvent or that such dividend would render it so, the directors assenting to such dividend shall be jointly and severally liable in an action founded on this act, for all debts due from such company, at the time of such dividend; Provided, That if any of the directors object to declaring such dividend, and file their objections in writing with the secretary of the company and with the clerk of the county, the director or directors so objecting shall be exempt from such liability.

§ 5076. If any company organized and established under the authority of this act, and of the act to which this is supplementary, shall violate any of the provisions thereof, and shall thereby become insolvent, the directors ordering or assenting to such violation shall jointly and severally be liable, in an action founded on said acts, for all debts contracted after such violation as aforesaid.

[In an action by a corporation creditor to recover of a director the penalty prescribed by this section, the burden of proving the facts from which the liability arises is on the creditor. *Bachman v. Cooper*, 50 N. E. Rep. 394.

Fact that officers are liable for violating § 5076 does not relieve them from any liability under § 5073. *Clow v. Brown*, 49 N. E. Rep. 1057.]

§ 5077. The stockholders and members of manufacturing and mining corporations shall only be liable for the amount of the stock subscribed by them respectively; and privileges or immunities which have been heretofore granted to such corporations shall, upon the same terms, equally belong to all citizens who may desire to incorporate themselves for the same purpose: Provided, That such stockholders shall be individually liable for all debts due and owing laborers, servants, apprentices and employes for services rendered such corporation.

[The person holding the stock at time debt is

contracted is the person liable under this section, and a subsequent holder is not liable. *Williams v. Hanna*, 40 Ind. 535.

A corporation aggregate cannot be employed by another corporation, within the meaning of the word "employers" as used in this section. *Dukes v. Love*, 97 Ind. 311.

Above section construed. *Wheeler v. Thayer*, 121 Ind. 64; s. c., 22 N. E. Rep. 972.]

§ 5078. Whenever all the stockholders of any such company shall execute and acknowledge, before some officer authorized to take acknowledgments of deeds, a certificate, in writing, showing the consent of such stockholders to an extension and enlargement of the objects of such company, beyond those expressed in the original certificate of incorporation, and shall file and have the same recorded, as in the first section (3851) provided, such company shall thereafter have full power and authority to carry on their operations and pursue their objects to the extent expressed and allowed in the certificate showing such enlargement and extension; and such corporation may take, hold, and convey real estate proper for carrying on the proposed business thereof in the county where the organization is had, and in any other county or counties of this State, and in each or any State or territory of the United States.

§ 5079. Whenever any corporation shall have conformed to, and complied with, the provisions of this act, it shall take and hold any real estate heretofore conveyed to it for such purposes as may be specified in the certificate provided for in said section; and all such conveyances and contracts in relation thereto are hereby declared valid and binding on the parties thereto.

§ 5080. But no charter of any mining or manufacturing company within this State shall be deemed to have been forfeited for anything done prior to February 1, 1867, unless the same shall have been declared to have been forfeited by competent authority.

§ 5081. Whenever any company incorporated under the provisions of "An act for the incorporation of manufacturing and mining companies, and companies for mechanical, chemical, and building purposes," approved May 20, 1852, shall desire to construct a canal or race, for the purpose of creating or improving a hydraulic power for manufacturing purposes, such corporation shall possess the powers, and be subject to the liabilities and restrictions, expressed in the following:

First. To cause such examination and surveys as may be necessary to the selection of the most advantageous route for the same; and for such purposes, by their officers, agents, and servants, to enter upon the lands and waters of any person, but subject to responsibility for all damages which they shall do thereto.

Second. To receive, hold, and take such voluntary grants and donations of real es-

tate and other personal property as shall be made to it, to aid in the construction, maintenance, and accommodation of such canal; but the real estate thus received by voluntary grants shall be held and used for the purposes of such grants only.

Third. To purchase, and by voluntary grants and donations receive and take, and, by its officers, engineers, surveyors, and agents, enter upon, and take possession of and hold and use all such lands and real estate and other property as may be necessary for the construction and maintenance of the canal and other accommodations necessary to accomplish the objects for which the corporation is created; but not until the compensation to be made therefor, as agreed upon by the parties or ascertained as hereinafter prescribed, shall have been paid to the owner or owners thereof or deposited as hereinafter directed, unless the consent of such owner be given to enter into possession.

Fourth. To lay out its canal not exceeding one hundred feet wide, and to construct the same; and for the purposes of cuttings, embankments, and procuring stone, gravel, and timber, it may take as much more land, within the limits of its charter, in the manner provided hereinafter, as may be necessary for the proper construction and security of said canal.

Fifth. To construct its said canal upon or across any stream of water, water-course, road, highway, or railroad, so as not to interfere with the free use of the same, which the route thereof shall intersect, in such manner as to afford security for life or property; but the corporation shall restore the road or highway thus intersected to its former state, or in a sufficient manner not to have unnecessarily impaired its usefulness or injured its franchises.

Sixth. To purchase lands or take them; and may change the line of its canal, whenever a majority of the directors shall so determine, as is provided hereinafter; but no such change shall vary the general route of such canal.

§ 5082. In case any company formed under this act is unable to agree for the purchase of any real estate in any county, required for the construction of its canal, it shall have the right to acquire the title to the same in the manner and by the special proceedings prescribed in this act.

§ 5083. Such company is hereby authorized to enter upon any land for the purpose of examining and surveying its canal line, and may appropriate so much thereof as may be deemed necessary for its canal, including necessary culverts, drains, aqueducts, tail-races, materials for constructing (except timber) a right of way over adjacent lands, sufficient to enable such company to construct and repair its canals, and a right to conduct water by aqueducts, and the

right of making proper drains. The corporation shall forthwith deposit with the clerk of the circuit or other court of record of the county where the land lies, a description of the rights and interests intended to be appropriated; and such lands, rights and interests shall belong to such company, to use for the purpose specified, by making or tendering payment as hereinafter provided. The corporation may, by its directors, purchase any such lands, materials, right of way, or interest of the owner of such land; or in case the same is owned by a person insane or an infant, at a price to be agreed upon by the regularly constituted guardian of said insane person or infant, if the same shall be approved by the court in which the description aforesaid shall be filed; and on such agreement and approval, the owner or guardian, as the case may be, shall convey the said premises so purchased, in fee-simple or otherwise, as the parties may agree, to such canal company; and the deed, when made, shall be deemed valid in law. If the corporation shall not agree with the owner of the land (or with his guardian, if the owner is incapable of contracting), touching the damages sustained by such appropriation, such corporation shall deliver to such owner or guardian, if within the county, a copy of such instrument of appropriation. If the owner (or his guardian, in case such owner is incapable of contracting) be unknown or do not reside within the county, such corporation shall publish in some newspaper of general circulation in the county, for the term of three weeks, an advertisement reciting the substance of such instrument of appropriation. Upon filing such act of appropriation, and delivery of such copy, or making such publication, the circuit court or other court of record in the county where the land lies, or any judge thereof in vacation, upon the application of either party, shall appoint, by warrant, three disinterested freeholders of such county to appraise the damages which the owner of the land may sustain by such appropriation. Such appraisers shall be duly sworn; they shall consider the injury which such owner may sustain by reason of such canal, and shall forthwith return their assessment of damages to the clerk of such court, setting forth the value of the property taken or injury done to the property (which they shall assess to the owner or owners separately), to be by him filed and recorded. Thereupon, such corporation shall pay to said clerk the amount thus assessed, or tender the same to the party in whose favor the damages are awarded or assessed. On making payment or tender thereof in the manner herein required, it shall be lawful for such corporation to hold the interest in such lands or materials so appropriated, and the privilege of using any materials on said canal line within fifty feet on each side of the

Manufacturing, etc., corporations; laborers — Stat., §§ 5084 -5087, 5098, 5128, 7051.

center of such canal line, for the uses aforesaid. The cost of such award shall be paid by such company; and on notice by any party interested and showing said proceedings, the court may order payment thereof, and enforce such payment by execution. The award of said arbitrators may be reviewed by the circuit court or other court in which such proceedings may be had, on written exceptions filed by either party in the clerk's office within ten days after the filing of such award, and the court shall take such order therein as right and justice may require, by ordering a new appraisal on good cause shown: Provided, if prior to the assessment, the corporation shall tender to such owner (or his guardian, if he be unable to contract) an amount equal to the award afterward made, exclusive of costs, the costs of arbitration shall be paid equally by such company and such owner or guardian.

§ 5084. If there are adverse or conflicting claimants to the money, or any part of it, to be paid as compensation for the real estate taken, the court may direct the money to be paid into said court by said company, until it can determine who is entitled to the same, and shall direct to whom the same shall be paid; and may, in its discretion, order a reference to ascertain the facts on which said determination and order are to be made.

§ 5085. The court shall appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown, and who has not appeared in the proceedings by an attorney or agent. The court shall also have power, at any time, to amend any defect or informality in any of the special proceedings authorized by this act as may be necessary, or to cause new parties to be added, and to direct such further notice to be given to any party in interest as it deems proper; and also to appoint other commissioners in the place of any who shall die, or refuse or neglect or are unable to serve, or who may leave or be absent from the State.

§ 5086. At any time after an attempt to acquire title by appraisal of damages or otherwise, if it shall be found that the title thereby attempted to be acquired is defective, the company may proceed anew to acquire or perfect the same, in the same manner as if no appraisal had been made.

§ 5087. Any manufacturing company, now or hereafter organized in this State, may take and hold stock in any corporation organized for the purpose of furnishing water power.

§ 5098. Corporations created by the laws of any State of the United States other than of the State of Indiana, and organized for the purpose of manufacturing goods, wares and merchandise, or for the purpose of mining, shall have the same right to pur-

chase and hold real estate for the purpose of their business, and to convey or mortgage the same, as corporations organized for similar purposes under the laws of this State.

§ 5128. In case of insolvency or insufficiency of effects of a corporation to pay the debts against it, each of the stockholders shall be liable in an amount equal to the amount of his stock at the time the debts were contracted, and no further, after the assets of the corporation are exhausted: Provided, That the directors, with the assent of stockholders, may increase the liability to any amount not exceeding three times the amount of stock held by each stockholder. Any corporation desiring to avail itself of the provisions of this act, or of any part thereof, may do so within sixty days after the passage of this act, and shall do so by resolution of the board of directors showing the provisions adopted, which resolution shall be filed in the office of the secretary of State, and accompanying such resolution, or as preamble thereto, there shall be a statement giving the title and date of the act creating said corporation, and also giving the title and date of each act amendatory or supplemental to the first mentioned act.

See § 3451.

## CHAPTER LXXXI.

### Laborers.

- Art. 1. When preferred creditors.  
2. Day's labor.  
3. Payment of wages.  
4. Blacklisting.  
5. Importing alien laborers.  
6. Injuries to employees.

## ARTICLE I.

### When Preferred Creditors.

Sec. 7051. When preferred creditors.

§ 7051. Hereafter, when the property of any company, corporation, firm or person, engaged in any manufacturing, mechanical, agricultural or other business or employment, or in the construction of any work or building, shall be seized upon any mesne process of any court of this State, or where their business shall be suspended by the action of creditors or put into the hands of any assignee, receiver, trustee, then in all such cases and debts owing to laborers or employes, which have accrued by reason of their labor or employment to an amount not exceeding fifty dollars to each employe, for work and labor performed within six months next preceding the seizure of such property, shall be considered and treated as preferred debts, and such laborers or employes shall be preferred creditors and shall be first paid in full, and if there be not,

Day's labor; payment of wages — Stat., §§ 7052-7059.

sufficient to pay them in full, then the same shall be paid to them pro rata, after paying costs.

### ARTICLE II.

#### Day's Labor.

Sec. 7052. Day's labor.  
7053. Where applicable.  
7054. Violation; penalty.  
7055. Secret invasion; penalty.

§ 7052. That on and after the passage of this act eight hours will constitute a legal day's work for all classes of mechanics, workmen and laborers, excepting those engaged in agricultural or domestic labor, but over work for an extra compensation by agreement between employer and employee is hereby permitted.

§ 7053. This act shall apply to all persons, firms, corporations, companies or associations employing labor in this State, and to all mechanics, workmen and laborers now or hereafter employed by this State or any municipal corporation herein, through its agents, or officers, or in the employ of persons contracting with the State, or any municipal corporations thereof for performance of labor on the public works of this State, or such corporation.

§ 7054. Any person, firm, company, corporation or association doing business in this State, or any officer or agent of this State or municipal corporation thereof, who shall violate or otherwise evade the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not greater than five hundred dollars, and if the person or persons violate the same be an officer or agent of this State, or of any municipal corporation thereof, he shall in addition to such fine, be removed from his position.

§ 7055. Any party or parties contracting with this State, or any municipal corporation thereof, who shall fail to comply with, or secretly evade, the provisions hereof, by exacting and receiving more hours of labor than is herein fixed, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not greater than five hundred dollars, and in addition thereto, in the option of the State or municipal corporation, forfeit such contract.

### ARTICLE III.

#### Payment of Wages.

Sec. 7056. Payment of employees.  
7057. Employee may demand payment; penalty for refusal.  
7058. Preferred claim.  
7059. Payments to be made weekly.  
7060. Checks or cards to employees; issuing prohibited; penalty.  
7061. Sale of merchandise.  
7062. Failure to pay wages; penalty.  
7063. Penalty for violating act.

Sec. 7064. Liens not affected.  
7065. Pay of laborers.  
7066. Not to issue cards or checks in payment.  
7067. Sale of supplies to employee; price.  
7068. Failure to pay after demand.  
7069. Violation of act a misdemeanor.  
7070. Liens not affected.  
7071. Waiver of money payment not prohibited.  
7072. Procuring contract of waiver prohibited.  
7073. Coercion to buy a particular place unlawful.  
7074. Attempt to coerce.  
7075. Penalty.

§ 7056. That every company, corporation or association now existing, or hereafter organized and doing business in this State, shall, in the absence of a written contract to the contrary, be required to make full settlement with, and full payment in money to, its employees, engaged in manual or mechanical labor, for such work and labor done or performed by said employees for such company, corporation or association at least once in every calendar month of the year.

§ 7057. If any company, corporation or association shall neglect to make such payment, such employee may demand the same of said company, corporation or association, or any agent of said company, corporation or association, upon whom summons might be issued in a suit for such wages, and if said company, corporation or association shall neglect to pay the same for thirty days thereafter, said company, corporation or association shall be liable to a penalty of one dollar for each succeeding day, to be collected by such employee in a suit (together with reasonable attorneys' fees in said suit) for said wages withheld: Provided, That said penalty shall in no instance exceed twice the amount due and withheld.

§ 7058. All debts due any person for manual or mechanical labor shall be a preferred claim in all cases against any individual, copartnership, corporation or joint-stock company where the property thereof shall pass into the hands of an assignee or receiver, and such assignee or receiver in the distribution and payment of the debts shall be required to first pay in full all debts due for manual or mechanical labor before paying any other, except the legitimate costs and expenses.

§ 7059. That every corporation, association, company, firm or person engaged in this State in mining coal, ore or other mineral, or quarrying stone, or in manufacturing iron, steel, lumber, staves, heading barrels, brick tile, machinery, agricultural or mechanical implements, or any article of merchandise shall pay each employee of such corporation, association, company, firm or person at least once every week the amount to such employee for labor, and such payment shall be in lawful money of the United States, and any contract to the contrary shall be void.

## Payment of wages — Stat., §§ 7060-7071.

§ 7060. That any person, copartnership, corporation or association, or any member, agent or employee thereof, who shall publish, issue or circulate and check, card or other paper which is not commercial paper payable at a fixed time in any bank in this State at its full face value in lawful money of the United States, with eight per cent. interest or by bank check or currency issued by authority of the United States government, to any employee of such person, copartnership, corporation or association, in payment for any work or labor, done by such employee or in payment for any labor contracted to be done by such employee shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not more than one hundred dollars.

§ 7061. It shall be unlawful for any corporation, company, association, firm or person, described in section 1 of this act, or the officers and agents of such to sell either directly or indirectly to any employee of such corporation, company, association, firm or person any merchandise or supplies at a higher price than such merchandise or supplies are sold by such corporation, company, association, firm or person to others for cash.

§ 7062. Every corporation, company, association, firm or person who shall fail, after demand for payment has been made, to pay employees for their labor, in conformity with the provisions of this act, shall be liable to such employee for the full value of his labor, to which shall be added a penalty of one dollar for each succeeding day, not exceeding double the amount of wages due, and a reasonable attorney's fee to be recovered in a civil action and collectible without relief from valuation and appraisement laws.

§ 7063. Every corporation, company, association, firm or person who violate any of the provisions of section three (3)\* shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than five nor more than one hundred dollars.

§ 7064. This act shall not in any way affect the liens of laborers as now secured to them by the laws of this State.

§ 7065. That every corporation, association, company, firm or person engaged, in this State, in mining coal, ore or other mineral, or quarrying stone, or in manufacturing iron, steel, lumber, staves, heading barrels, brick, tile machinery, agricultural or mechanical implements, or any article of merchandise, shall pay each employee of such corporation, company, association, firm or person, if demanded, at least once every two weeks, the amount due such employee for labor, and such payment shall be in

lawful money of the United States, and any contract to the contrary shall be void.

§ 7066. That any person, copartnership, corporation or association, or any member, agent or employee thereof, who shall publish, issue or circulate any check, card or other paper, which is not commercial paper payable at a fixed time in any bank in this State, at its full face value, in lawful money of the United States, with eight per cent. interest, or by bank check or currency issued by authority of the United States government, to any employee of such person, copartnership, corporation or association, in payment for any work of labor done by such employee, or in payment of any labor contracted to be done by such employee, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than one hundred dollars.

§ 7067. It shall be unlawful for any corporation, company, association, firm or person described in section one (1) of this act, or the officers and agents of such, to sell, directly or indirectly, to any employee of such corporation, association, firm or person, any merchandise or supplies are sold by such corporation, company, association, firm or person to others for cash.

§ 7068. Every corporation, company, association, firm or person who shall fail for ten days after demand of payment has been made to pay employees for their labor, in conformity with the provisions of this act, shall be liable to such employee for the full value of his labor, to which shall be added a penalty of one dollar for each succeeding day, not exceeding double the amount of wages due, and a reasonable attorney's fee, to be recovered in a civil action and collectible without relief.

§ 7069. Every corporation or person who knowingly and wilfully violates any of the provisions of section three (3)\* of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than five nor more than one hundred dollars.

§ 7070. This act shall not in any way affect the liens of laborers, as now secured to them by the laws of this State.

§ 7071. That it shall be unlawful for any owner, corporation, association, company, firm or person engaged in mining coal, ore or other minerals or quarrying stone, or in manufacturing iron, steel, lumber, staves, heading barrels, brick, tile, machinery, agricultural or mechanical implements or any article of merchandise, to directly or indirectly procure any person or persons to execute a contract or agreement to waive his or their legal right to demand or receive from such owner, corporation, association, company, firm or person, at least once every two weeks, payment of the amount

\* § 7061.

\* § 7067.

due such person or persons for labor performed, in lawful money of the United States.

§ 7072. It shall be unlawful for any owner, corporation, association, company, firm or person engaged in this State in mining coal, ore, or other minerals or quarrying stone, or in manufacturing iron, steel, lumber, staves, heading barrels, brick, tile, machinery, agricultural or mechanical implements, or any article of merchandise to directly or indirectly procure any person or persons to execute any contract or agreement by the terms which such person or persons agree to purchase any article of merchandise, food, groceries or supplies of any particular person, corporation, association, firm or company, or any particular place, shop or store in this State.

§ 7073. It shall be unlawful for any owner, manager, superintendent, operator, bank boss, agent or employer-employees in any of the occupations described in section 1 of this bill, to hold out any tokens or inducements, or make any threats or promises of reward, or in any other way by words or acts, to coerce any of their employees to buy any article of merchandise, food, groceries or supplies of any particular person, corporation, association, firm or company, or at any particular place, shop or store in this State.

§ 7074. It shall be unlawful for any owner, manager, superintendent, operator, bank boss, agent or employer to attempt by words or acts to coerce any of their employees to buy any article of merchandise, food, groceries or supplies of any particular person, corporation, association, firm or company, or at any particular place, shop or store in this State.

§ 7075. Every owner, corporation, association, company, firm, person, manager, superintendent, bank boss, agent or employer, who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than two hundred dollars.

#### ARTICLE IV.

##### Blacklisting.

Sec. 7076. Preventing discharged employe from obtaining work.

7077. Blacklisting.

7078. Statement of cause of discharge.

§ 7076. That if any person, agent, company or corporation, after having discharged any employe from his or its service, shall prevent, or attempt to prevent, by word or writing of any kind, such discharged employe from obtaining employment with any other person, company or corporation, such person, agent or corporation shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars

nor less than one hundred dollars, and such person, agent, company or corporation shall be liable in penal damages to such discharged person, to be recovered by civil action; but this section shall not be construed as prohibiting any person or agent of any company or corporation from informing in writing any other person, company or corporation, to whom such discharged person or employe has applied for employment, a truthful statement of the reasons for such discharge.

Exemption of wages of employes. §§ 970-972. See act to regulate employment of women and children at p. 31.

§ 7077. (As amended March 11, 1895.) If any railway company or any other company or partnership or corporation in this State shall authorize, allow or permit any of its or their agents to blacklist any discharged employes, or attempt by words or writing, or any other means whatever, to prevent such discharged employe, or any employe who may have voluntarily left said company's service, from obtaining employment with any other person, or company, said company shall be liable to such employe in such sum as will fully compensate him, to which may be added exemplary damages.

§ 7078. It shall be the duty of any person, agent, company or corporation, after having discharged any employe from his or its service, upon demand by such discharged employe, to furnish him in writing a full, succinct and complete statement of the cause or causes of his discharge, and if such person, agent, company or corporation shall refuse so to do within a reasonable time after such demand, it shall ever after be unlawful for such person, agent, company or corporation to furnish any statement of the cause of such discharge to any person or corporation, or in any way to black-list or to prevent such discharged persons from procuring employment elsewhere, subject to the penalties prescribed in section 1 of this act (§ 7076): Provided, That said written cause of discharge, when so made by such person, agent, company or corporation at the request of such discharged employe shall never be used as the cause for an action for slander or libel, either civil or criminal, against the person, agent, company or corporation so furnishing the same.

#### ARTICLE V.

##### Importing Alien Laborers.

Sec. 7079. Aliens; importation of labor.

7080. Contracts void.

7081. Penalty.

7082. Foreign residents.

§ 7079. That from and after the passage of this act, it shall be unlawful for any per-



Alien laborers; injuries to employes — Stat., §§ 7080-7084.

son, company, partnership, or corporation, in any manner whatsoever, to prepay transportation or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into and State of Indiana under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in this State.

§ 7080. That all contracts or agreements, express or implied, parol or special, which may hereafter be made by and between any person, company, partnership or corporation, and any foreigner or foreigners, alien or aliens, to perform labor or service, or having reference to the performance of labor or service, by any person in the State of Indiana previous to the migration or importation of the person or persons whose labor or service is contracted for, into the United States, shall be utterly void and of no effect.

§ 7081. That for every violation of any of the provisions of section 1 of this act, the person, partnership, company, or corporation violating the same by knowingly assisting, encouraging or soliciting migration or importation of any alien or aliens, or of any foreigner or foreigners into the State of Indiana to perform labor or service of any kind under contract or agreement, express or implied, parol or special with such alien or aliens, foreigner or foreigners, previous to becoming residents or citizens of the United States, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five thousand dollars.

§ 7082. That nothing in this act shall be so construed as to prevent any citizen or subject of any foreign country temporarily residing in the United States, either in a private or official capacity, from engaging under contract or otherwise, persons not residents or citizens of the United States, to act as private secretaries, servants or domestics for such foreigner temporarily residing in the United States, nor shall this act be so construed as to prevent any person or persons, partnership or corporation, from engaging, under contract or agreement, skilled workmen in foreign countries to perform labor in the State of Indiana, in or upon any new industry not at present established in the State; Provided, That skilled labor for that purpose can not otherwise be obtained; nor shall the provisions of this act apply to professional actors, artists, lecturers or singers, nor to persons employed strictly as personal or domestic servants: Provided, That nothing in this act shall be construed as prohibiting any individual from assisting any member of his family, or relative, or personal friend to migrate from any foreign country to the State for the purpose of settlement here.

## ARTICLE VI.

### Injuries to Employes.

Sec. 7083. Liability for personal injuries.

7084. When damages not recoverable.

7085. Measure of damages.

7086. Laws of other State not a defense.

7087. Contracts of release void.

§ 7083. That every railroad or other corporation, except municipal, operating in this State, shall be liable for damages for personal injury suffered by any employe while in its service, the employe so injured being in the exercise of due care and diligence, in the following cases:

First. When such injury is suffered by reason of any defect in the condition of ways, with or in use in the business of such corporation, when such defect was the result works, plant, tools and machinery connected of negligence on the part of the corporation, or some person entrusted by it with the duty of keeping such way, works, plant, tools or machinery in proper condition.

Second. When such injury resulted from the negligence of any person in the service of such corporation, to whose order or direction the injured employe at the time of the injury was bound to conform, and did conform.

Third. Where such injury resulted from the act or omission of any person done or made in obedience to any rule, regulation or by-law of such corporation, or in obedience to the particular instructions given by any person delegated with the authority of the corporation in that behalf.

Fourth. Where such injury was caused by the negligence of any person in the service of such corporation who has charge of any signal, telegraph office, switch yard, shop, round-house, locomotive engine or train upon a railway, or where such injury was caused by the negligence of any person, coemploye or fellow servant engaged in the same common service in any of the several departments of the service of any such corporation, the said person, coemploye or fellow servant, at the time acting in the place, and performing the duty of the corporation in that behalf, and the person so injured, obeying or conforming to the order of some superior at the time of such injury, having authority to direct; but nothing herein shall be construed to abridge the liability of the corporation under existing laws.

§ 7084. Neither an employe nor his legal representative shall be entitled under this act to any right of compensation or remedy against the corporation in any case where the injury results from obedience to any order which subjects the employe to palpable danger, nor where the injury was caused by the incompetency of the coemploye and such incompetency was known to the employe injured; or such injured employe, in the exercise of reasonable care might have discovered such incompetency; unless the

Injuries to employes; fees of secretary of state — Stat., §§ 7085-7087, 7631.

employe so injured gave or caused to be given information thereof to the corporation or to some superior entrusted with the general superintendence of such coemploye, and such corporation failed or refused to discharge such incompetent employe within a reasonable time, or fail or refuse within reasonable time, to investigate the alledged incompetency of the coemploye or superior, and discharge him if found incompetent.

§ 7085. The damages recoverable under this act, shall commensurate with the injury sustained unless death results from such injury, when, in such case, the action shall survive and be governed in all respects by the law now in force as to such actions: Provided, That where any such person recovers a judgment against a railroad or other corporation, and such corporation takes an appeal, and, pending such appeal, the injured person dies, and the judgment rendered in the court below be thereafter reversed, the right of action of such person shall survive to his legal representative.

§ 7086. In case any railroad corporation which owns or operates a line extending into or through the State of Indiana and into or through another or other States, and a person in the employ of such corporation, a citizen of this State, shall be injured as provided in this act, in any other State where such railroad is owned or operated, and a suit for such injury shall be brought in any of the courts of this State, it shall not be competent for such corporation to plead or prove the decisions or statutes of the State where such person shall have been injured as a defense to the action brought in this State.

§ 7087. All contracts made by railroads or other corporations with their employes, or rules or regulations adopted by any corporation releasing or relieving it from liability to any employe having a right of action under the provisions of this act are hereby declared null and void. The provisions of this act however shall not apply to any injuries sustained before it takes effect, nor shall it affect in any manner any suit or legal proceedings pending at the time it takes effect.

## CHAPTER XCIX.

### Offices and Officers.

Art. 9. Secretary of State.  
39. Notaries public.

## ARTICLE IX.

### Secretary of State.

Sec. 7631. Fees.  
7632. Certificate not to be filed until fees paid.

§ 7631. That the secretary of State shall hereafter charge and collect, for the benefit of the State, the following fees, viz.:

First. For filing with such secretary of

State the articles of incorporation, or a certified copy or duplicate thereof, of any corporation whose capital stock is ten thousand dollars or under, ten dollars. Of a corporation whose capital stock is over ten thousand dollars, one-tenth of one per cent, upon the authorized capital stock of such association.

Second. For filing with the secretary of State a certificate of increase of capital stock of any corporation having a capital stock where the amount of increase is ten thousand dollars, one-tenth of one per cent, upon the proposed amount of increased capital.

Third. For filing with such secretary the articles of agreement, or a certified copy or duplicate thereof, of any consolidations of corporations having a capital stock, the following fees shall be collected by the secretary of State: Said articles of agreement of consolidations shall be treated as the articles of incorporation of the new consolidated corporations created by such articles of agreements of consolidation, shall be the same in each case as is hereinbefore set forth for the filing of articles of incorporation, or certified copies, or duplicate thereof, of a corporation having the same amount of capital stock as is provided for by the articles of agreement or consolidation; and in fixing the amount of fees, no credit shall be allowed for fees previously paid by any of the constituent corporations, parties to such consolidation, but the same shall be determined solely by the amount of capital stock of the new corporation created by such articles of agreements of consolidation.

Seventh. For filing with such secretary a certificate of the reduction of the capital stock of any corporation, five dollars.

Eighth. For filing with such secretary a copy of the decree of court, changing the name of any corporation, five dollars.

Ninth. For filing with such secretary an amendment of the articles of incorporation, twenty cents a hundred words, to be in no case less than five dollars.

Eleventh. For filing with such secretary a certificate of the extension of purpose, or change of domicile of any corporation, five dollars.

Twelfth. For filing with such secretary other certificates, not herein enumerated, except certificates of election, for filing which no charge shall be made, twenty cents a hundred words, to be in no case less than five dollars.

Thirteenth. For filing with such secretary any certified copy or duplicate of acceptance by any existing corporation or association of the provisions of any statute passed subsequent to the incorporation of such corporation or association now required by law to be filed with the secretary of State, or that may hereafter be required to be filed with the secretary in such cases, five dollars.

§ 7632. All the fees in this act provided for

shall be paid into the State treasury, and shall be in addition to any fees that are now allowed by law to the secretary of State for personal services for filing any of the papers herein mentioned. And such secretary of State shall neither file nor record any of the articles of incorporation, certificates, duplicates, or other papers hereinbefore mentioned, unless all fees for filing the same are first duly paid.

### ARTICLE XXX.

#### Notaries Public.

Sec. 8041. Who cannot be a notary public.

§ 8041. No person, being an officer in any corporation or association, or in any bank possessed of any banking powers, shall act as a notary public in the business of such bank, corporation or association. \* \* \*

### CHAPTER CVIII.

#### Taxation.

- Art. 4. Property, where assessed.  
5. Definitions and rules.  
9. Domestic corporations.  
19. Proceedings against corporations.

### ARTICLE IV.

#### Where Assessed.

- Sec. 8422. Corporate property.  
8426. Banks; brokers; stockjobbers, etc.

§ 8422. All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation. The place where its principal office in this State is situated shall be deemed its residence, but if there be no principal office in the State, then such property shall be listed and taxed at any place in the State where the corporation transacts business.

[A tax assessed on the capital stock of a corporation is a tax on the property of which such capital is composed. *Whitney v. City*, 23 Ind. 336.]

There are in this State two recognized modes of taxing capital stock of corporations—by assessment against the corporation itself, and against the individual stockholders. Where statute does not otherwise provide, stockholders are separately and severally listed by the assessor for the amount of their capital stock. *Id.* The actual value of such stock must in all cases be the criterion of taxation. *Id.*

Shares of stock in incorporated companies, whether the property of such companies be tangible or intangible, are personal property. *Seward v. City*, 79 Ind. 351.

A city has the right to tax its citizens for stock owned by them in a foreign railroad company, although a tax has been paid thereon in the State where the corporation is located. *Id.*

Where all the property of a tangible corporation is duly returned for taxation, and represents the entire capital of the corporation, the capital stock could not be assessed for taxation. *Hyland v. Coal Co.*, 128 Ind. 335; s. c., 26 N. E. Rep. 672.

But where such tangible property is of less value than the capital stock, the latter is taxable to the extent that it exceeds in value the

tangible property. *Hyland v. Steel Co.*, 129 Ind. 68; s. c., 28 N. E. Rep. 308.

County board of equalization has exclusive original jurisdiction in assessment of capital stock of corporations, and whether value of such stock exceeds value of tangible property, is for such board to decide. *Jones v. Gas Co.*, 135 Ind. 594; s. c., 35 N. E. Rep. 390.]

§ 8426. The personal property of \* \* \* all companies except companies specially provided for in this act, shall be listed and assessed in the township, town or city where such personal property is situated.

### ARTICLE V.

#### Definitions and Rules.

- Sec. 8435. Franchises.  
8456. "Person" includes corporations.

§ 8435. Every franchise granted by any law of this State, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation, shall be listed and assessed as personal property.

§ 8456. The word "person," as used in this act, shall be held to include and mean "firm," "company," "association," or "corporations."

### ARTICLE IX.

#### Domestic Corporations.

- Sec. 8491. Sworn statement.  
8492. Schedule.  
8493. Failure; duty of auditor of State.  
(Acts 1891, p. 199. In force March 6, 1891.)

§ 8491. Every street railroad, water works, gas, manufacturing, mining, gravel-road, plank-road, savings bank, insurance and other associations incorporated under the laws of this State (other than railroad companies and those heretofore specially designated) shall, by its president or other proper accounting officer, between the first day of April and the first day of June of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor, a sworn statement of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares in which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if no market value, then the actual value of the shares of stock.

Fifth. The total amount of indebtedness, except the indebtedness for current expenses excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The value of all tangible property.

Seventh. The difference in value between all tangible property and the capital stock.

Eighth. The name and value of each fran-

chise or privilege owned or enjoyed by such corporation.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of State. In case of the failure or refusal to make report, such corporation shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the first day of June, to be sued and recovered in any proper form of action in the name of the State of Indiana, on the relation of the prosecuting attorney, such penalty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of ten dollars to be taxed as costs in such action.

[Where all the tangible property of a corporation is duly returned for taxation, and represents the entire capital of the corporation, the capital stock could not be assessed for taxation. *Hyland v. Coal Co.*, 128 Ind. 335; s. c., 26 N. E. Rep. 672.

But where such tangible property is of less value than the capital stock, the latter is taxable to the extent that it exceeds in value the tangible property. *Hyland v. Steel Co.*, 129 Ind. 68; s. c., 28 N. E. Rep. 308.

No special notice of the time or place of board of equalization to assess property of corporations need be given, if the law fixes such time and place. *Hyland v. Coal Co.*, supra; *Smith v. Manufacturing Co.*, 131 Ind. 150; s. c., 30 N. E. Rep. 947.]

§ 8492. Such statement shall be scheduled by the assessor, and such schedule, with the statement so scheduled, shall be returned by the assessor to the county auditor. The auditor shall annually, on the meeting of the county board of review, lay before said board the schedule and statements herein required to be returned to him, and said board shall value and assess the capital stock and all franchises and privileges of such companies or associations in the manner provided in this act, and the said auditor shall compute and extend the taxes for all purposes on the respective amounts so assessed, the same as may be levied on other property in such towns, cities or other localities in which such companies or associations are located. In all cases where the capital stock of any such corporation exceeds in value that of the tangible property listed for taxation, then such capital stock shall be subject to taxation upon such excess of value; where no tangible property is returned or found, and the capital stock has a value, it shall be assessed for its true cash value. But where the capital stock, or any part thereof, is invested in tangible property, returned for taxation, such capital stock shall not be assessed to the extent that it is so invested. Every franchise or privilege of any such corporation shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital stock listed for taxation then such franchise shall not itself be taxed; but in all cases where the franchises is of greater

value than the capital stock, then the franchise shall be assessed at its full cash value, and the capital stock in such case shall not be assessed.

§ 8493. In case of the failure or refusal of the person or persons, joint-stock associations, companies or corporations, their officers, agents or employes specified in the preceding section to make and return the statements and reports therein provided for the auditor of State shall make out such returns, statements and valuations from the best information he can obtain, and for that purpose he shall have power to summons and examine, under oath, any person whom he may believe to have a knowledge thereof. And he shall add to such valuation twenty-five per centum thereon.

## ARTICLE XIX.

### Proceedings Against Corporations.

Sec. 8579. Collection from corporations.

§ 580. When tax is collected.

§ 581. Bill of discovery.

§ 8579. The county treasurer shall demand payment of all taxes assessed on incorporated companies, except national banks and building and loan fund associations, from the president or other proper officer of such companies, in the same manner as in other cases, and if not paid shall proceed in the collection and payment thereof and penalties thereon in the same manner as in other cases, and shall be liable to the same penalties for the nonpayment of moneys collected by him.

§ 8580. If such county treasurer shall not be able to collect any tax assessed upon any incorporated company, he shall return the same to the county auditor and be allowed therefor as in other cases, and the county auditor shall certify the same, with the delinquent taxes, to the auditor of the State.

§ 8581. If any such company shall not have personal or real estate out of which to make such delinquent taxes, the auditor of State may, if he deem it expedient, cause to be filed in a proper court, a bill against such company for the discovery and sequestration of its property; which court shall order such part of the property of such company to be sequestered as they shall deem necessary for the purpose of satisfying the taxes, penalties and interest in arrears, with the cost of prosecution, and they may also, at their discretion, enjoin such company and the officers thereof from any further proceedings under their act of incorporation, and may order and direct such other proceedings as they shall deem necessary to compel the payment of such taxes, penalties, interest and cost; or such tax, penalties or interest may be recovered with cost from such delinquent company by action in the name of the State, or in the relation of the auditor of State, in the circuit court of the proper county.

Prohibiting trusts and combinations — Act, March 5, 1897.

## LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1894.

1. Prohibiting trusts and combinations.
2. Regulating the employment of women and children.

### Act 1.

AN ACT to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations made with a view to lessen, or which tend to lessen, free competition in the importation or sale of articles imported into this State or in the manufacture or sale of articles of domestic growth or of domestic raw material; to declare unlawful and void all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation organized under the laws of this State, violating any of the provisions of this act, from doing business in this State; to require the attorney-general of this State to institute legal proceedings against any such corporations violating the provisions of this act, and to enforce the penalties prescribed; to prescribe penalties for any violation of this act; to authorize any person or corporation, damaged by any trust, agreement, or combination, to sue for the recovery of such damage, and for other purposes.

Section 1. Be it enacted by the general assembly of the State of Indiana, and it is hereby enacted by the authority of the same, That from and after the passage of this act, all arrangements, contracts, agreements, trusts, or combinations between persons or corporations who control the output of said [any] article of merchandise, made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations who control the output of said articles of merchandise designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. That any corporation, chartered under the laws of this State, which shall violate any of the provisions of this act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provi-

sions of this act, is hereby denied the right to do, and is prohibited from doing business in this State. It is hereby made the duty of the attorney-general of the State to enforce this provision by due process of law.

§ 3. That any violation of the provisions of this act shall be deemed, and, is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director, or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than one year or more than ten years; or, in the judgment of the court, by either such fine or such imprisonment.

§ 4. The persons designed by this act to be affected hereby are those who own, control or manufacture the output of any particular article of merchandise mentioned herein; Provided, however, That the provisions of this act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

§ 5. That any person or persons or corporations that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section 1 of this act, may sue for and recover in any court of competent jurisdiction, in this State, of any person, persons or corporation operating such trust or combination the full consideration or sum paid by him or them for any goods, wares, merchandise or articles, the sale of which is controlled by such combination or trust.

§ 6. That it shall be the duty of the judges of the circuit courts of this State specially to instruct the grand juries as to the provisions of this act.

§ 7. That all laws and parts of laws in conflict with the provisions of this act be and the same are hereby repealed.

(Approved March 5, 1897.)

### Act 2.

AN ACT to regulate the employment of women and children in manufacturing establishments, and to provide for the appointment of inspectors to enforce the same.

Section 1. Be it enacted by the general assembly of the State of Indian, That no per-

son under sixteen years of age and no woman under eighteen years of age, employed in any manufacturing establishment, shall be required, permitted or suffered to work therein more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the whole number of days in which such person or such woman shall so work during such week; and every person, firm, corporation or company employing any person under sixteen years of age or any women under eighteen years of age in any manufacturing establishment shall post and keep posted in a conspicuous place in every room where such help is employed a printed notice stating the number of hours of labor per day required of such persons for each day of the week, and the number of hours of labor exacted or permitted to be performed by such persons shall not exceed the number of hours of labor so posted as being required. The time of beginning and ending the day's labor shall be the time stated in such notice: Provided, That such woman under eighteen and persons under sixteen years of age may begin after the time set for the beginning and stop before the time set in such notice for the stopping of the day's labor, but they shall not be permitted or required to perform any labor before the time stated on the notices as the time for beginning the day's labor, nor after the time stated upon the notices as the hour for ending the day's labor.

§ 2. No child under fourteen years of age shall be employed in any manufacturing establishment within this State. It shall be the duty of every person employing children to keep a register, in which shall be recorded the name, birth-place, age and place of residence of every person employed by him under the age of sixteen years; and it shall be unlawful for any proprietor, agent, foreman or other person in or connected with a manufacturing establishment to hire or employ any child under the age of sixteen years to work therein without there is first provided and placed on file in the office an affidavit made by the parent or guardian, stating the age, date and place of birth of said child; if said child shall have no parent or guardian, then such affidavit shall be made by the child, which affidavit shall be kept on file by the employer, and said register and affidavit shall be produced for inspection on demand made by the inspector, appointed under this act. There shall be posted conspicuously in every room where children under sixteen years of age are respectively, (No child under the age of sixteen years shall be employed in any manufacturing establishment who cannot read and write simple sentences in the English

language, except during the vacation of the public schools in the city or town where such minor lives. The factory inspector shall have the power to demand a certificate of physical fitness from some regular physician in the case of children who may seem physically unable to perform the labor at which they may be employed, and shall have the power to prohibit the employment of any minor that cannot obtain such a certificate.)

§ 3. No person, firm or corporation shall employ or permit any child under the age of fifteen years to have the care, custody, management of or to operate any elevator, or shall employ or permit any person under the age of eighteen years to have the care, custody, management or operation of any elevator running at a speed of over two hundred feet a minute.

§ 4. It shall be the duty of the owner or lessee of any manufacturing establishment where there is any elevator, hoisting shaft or well-hole to cause the same to be properly and substantially inclosed or secured, if in the opinion of the factory inspector it is necessary, to protect the lives or limbs of those employed in such establishment. It shall also be the duty of the owner, agent or lessee of each of such establishments to provide, or cause to be provided, if in the opinion of the inspector the safety of persons in or about the premises should require it, such proper trap or automatic doors so fastened in or at all elevator-ways as to form a substantial surface when closed, and so constructed as to open and close by the action of the elevator in its passage, either ascending or descending, but the requirements of this section shall not apply to passenger elevators that are closed on all sides. The factory inspector may inspect the cables, gearing or other apparatus of elevators in manufacturing establishments and require that the same be kept in safe condition.

§ 5. Proper and substantial hand-rails shall be provided on all stairways in manufacturing establishments, and where in the opinion of the factory inspector it is necessary, the steps of said stairs in all such establishments shall be substantially covered with rubber, securely fastened thereon, for the better safety of persons employed in said establishments. The stairs shall be properly screened at the sides and bottom. All doors leading in or to such factory shall be so constructed as to open outwardly where practicable, and shall be neither locked, bolted nor fastened during working hours.

§ 6. If in the opinion of the factory inspector, it is necessary to insure the safety of the persons employed in any manufacturing establishment, three or more stories in height one or more fire-escapes, as may be deemed by the factory inspector as necessary and sufficient therefor, shall be provided on the outside of such establishment,

connected with each floor above the first, well-fastened and secured, and of sufficient strength, each of which fire-escapes shall have landings or balconies not less than six feet in length and three feet in width, guarded by iron railings not less than three feet in height, and embracing at least two windows at each story and connecting with the interior by easily accessible and unobstructed openings, and the balconies or landings shall be connected by iron stairs, not less than eighteen inches wide, the steps not to be less than six inches tread, placed at a proper slant, and protected by a well-secured hand-rail on both sides, with a twelve-inch wide drop-ladder from the lower platform reaching to the ground. Any other plan or style of fire-escape shall be sufficient, if approved by the factory inspector, but if not so approved, the factory inspector may notify the owner, proprietor or lessee of such establishment, or of the building in which such establishment is conducted, or the agent or superintendent, or either of them, in writing, that any such other plan or style of fire-escape is not sufficient, and may by an order in writing, served in like manner, require one or more fire-escapes, as he shall deem necessary and sufficient, to be provided for such establishment at such location and such plan and style as shall be specified in such written order. Within twenty days after the service of such order, the number of fire-escapes required in such order for such establishment shall be provided therefor, each of which shall be either of the plan and style and in accordance with the specifications in said order required, or of the plan and style in the section above described and declared to be sufficient. The windows or doors to each fire-escape shall be of sufficient size and be located as far as possible consistent with accessibility from the stairways and elevator hatchways or openings, and the ladder thereof shall extend to the roof. Stationary stairs or ladders shall be provided on the inside of such establishment from the upper story to the roof, as a means of escape in case of fire.

§ 7. It shall be the duty of the owner agent, superintendent or other person having charge of such manufacturing establishment, or of any floor or part thereof, to report in writing to the factory inspector all accidents or injury done to any person in such factory, within forty-eight hours of the time of the accident, stating as fully as possible the extent and cause of such injury and the place where the injured person is sent, with such other information relative thereto as may be required by the factory inspector. The factory inspector is hereby authorized and empowered to fully investigate the causes of such accidents, and to require such reasonable precautions to be taken as will in his judgment prevent the recurrence of similar accidents.

§ 8. It shall be the duty of any owner of

any manufacturing establishment, or his agents, superintendent or other person in charge of the same, to furnish and supply, or cause to be furnished and supplied therein, in the discretion of the factory inspector, where machinery is used, belt shifters or other safe mechanical contrivances for the purpose of throwing on or off belts or pulleys; and wherever possible, machinery therein shall be provided with loose pulleys; all vats, pans, saws, planers, cogs, gearing, belting, shafting, set-screws and machinery of every description therein shall be properly guarded, and no person shall remove or make ineffective any safeguard around or attached to any planer, saw, belting, shafting or other machinery, or around any vat or pan, while the same is in use, unless for the purpose of immediately making repairs thereto, and all such safeguards shall be promptly replaced. By attaching thereto a notice to that effect, the use of any machinery may be prohibited by the factory inspector, should such machinery be regarded as dangerous. Such notice must be signed by the inspector, and shall only be removed after the required safeguards are provided, and the unsafe or dangerous machine shall not be used in the meantime. Exhaust fans of sufficient power shall be provided for the purpose of carrying off dust from emery wheels and grindstones, and dust-creating machinery therein. No person under eighteen years of age, and no women under twenty-one years of age, shall be allowed to clean machinery while in motion.

§ 9. A suitable and proper washroom and water-closets shall be provided in each manufacturing establishment, and such water-closets shall be properly screened and ventilated and be kept at all times in a clean condition, and if women or girls are employed in any such establishment, the water-closets used by them shall have separate approaches and be separate and apart from those used by men. All water-closets shall be kept free from obscene writing and marking. A dressing-room shall be provided for women and girls, when required by the factory inspector, in any manufacturing establishment in which women and girls are employed.

§ 10. Not less than sixty minutes shall be allowed for the noonday meal in any manufacturing establishment in this State. The factory inspector shall have the power to issue written permits in special cases, allowing shorter meal time at noon, and such permit must be conspicuously posted in the main entrance of the establishment, and such permits may be revoked at any time the factory inspector deems necessary, and shall only be given where good cause can be shown.

§ 11. The walls and ceilings of each room in every manufacturing establishment shall be lime-washed or painted, when in the opinion of the factory inspector it shall be

conductive to the health or cleanliness of the persons working therein.

§ 12. The factory inspector, or other competent person designated for such purpose by the factory inspector, shall inspect any building used as a workshop or manufacturing establishment or anything attached thereto, located therein, or connected therewith, which has been represented to be unsafe or dangerous to life or limb. If it appears upon such inspection that the building or anything attached thereto, located therein, or connected therewith, is unsafe or dangerous to life or limb, the factory inspector shall order the same to be removed or rendered safe and secure, and if such notification be not complied with within a reasonable time, he shall prosecute whoever may be responsible for such delinquency.

§ 13. No room or rooms, apartment or apartments in any tenement or dwelling-house shall be used for the manufacture of coats, vests, trousers, knee-pants, overalls, cloaks, furs, fur trimmings, fur garments, shirts, purses, feathers, artificial flowers, or cigars, excepting by the immediate member of the family living therein. No person, firm or corporation shall hire or employ any person to work in any one room or rooms, apartment or apartments, in any tenement or dwelling-house, or building in the rear of a tenement or dwelling-house, at making, in whole or in part, any coats, vests, trousers, knee-pants, fur, fur trimmings, shirts, purses, feathers, artificial flowers, or cigars without obtaining first a written permit from the factory inspector, which permit may be revoked at any time the health of the community, or of those employed therein, may require it, and which permit shall not be granted until an inspection of such premises is made by the factory inspector, assistant factory inspector, or a deputy factory inspector, and the maximum number of persons allowed to be employed therein shall be stated in such permit. Such permit shall be framed and posted in a conspicuous place in the room, or in any one of the rooms to which it relates.

§ 14. No less than two hundred and fifty cubic feet of air space shall be allowed for each person in any workroom where persons are employed during the hours between six o'clock in the morning and six o'clock in the evening, and not less than four hundred cubic feet of air space shall be provided for each person in any one workroom where persons are employed between six o'clock in the evening and six o'clock in the morning. By a written permit the factory inspector may allow persons to be employed in a room where there are less than four hundred cubic feet of air space for each person employed between six o'clock in the evening and six o'clock in the morning; provided, Such room is lighted by electricity at all times during such hours while persons are employed therein. There shall be sufficient

means of ventilation provided in each workroom of every manufacturing establishment, and the factory inspector shall notify the owner in writing to provide, or cause to be provided, ample and proper means of ventilation for such workroom, and shall prosecute such owner, agent or lessee if such notification be not complied with within twenty days of the service of such notice.

§ 15. The governor shall, by and with the advice and consent of the senate, appoint a factory inspector. Said factory inspector shall hold and continue in office, after the expiration of his term of office until his successor shall be appointed and qualified. The term of office of the factory inspector shall be two years. The annual salary of such inspector shall be one thousand five hundred dollars (\$1,500), payable in monthly installments; said inspector shall, by and with the consent of the governor, appoint one assistant factory inspector, whose salary shall be one thousand dollars (\$1,000) per year, and he shall hold his office subject to removal by said inspector or the governor; shall be paid monthly by the treasurer upon the warrant of the auditor issued upon proper vouchers therefor.

§ 16. It shall be the duty of the factory inspector to cause this act to be enforced, and to cause all violators of this act to be prosecuted, and for that purpose he is empowered to visit and inspect at all reasonable hours, and as often as shall be practicable and necessary, all manufacturing establishments in this State. It shall be the duty of the factory inspector to examine into all the violations of the laws made for the benefit of labor and to prosecute all violations thereof. It shall be unlawful for any person to interfere with, obstruct or hinder said inspector while in the performance of his duties or to refuse to properly answer questions asked him with reference to any of the provisions hereof. The factory inspector shall make an annual report of his doings as such inspector to the governor during the month of January of each year. Such inspector shall have the power as a notary public to administer oaths and take affidavits in matters connected with the enforcement of the provisions of this act.

§ 17. The prosecuting attorney of any county of this State is hereby authorized upon the request of the factory inspector or any other person of full age, to commence and prosecute to termination before any circuit or criminal court or police court, in the name of the State, actions or proceedings against any person or persons reported to him to have violated the provisions of this act.

§ 18. The words "manufacturing establishment," wherever used in this act, shall be construed to mean any mill, factory or workshop where ten or more persons are employed at labor.

§ 19. A copy of this act shall be conspicu-



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Employment of children: factories — Act, March 2, 1897.

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ously posted and kept posted in each work-room of every manufacturing establishment in this State.

§ 20. Any person who violates or omits to comply with any of the provisions, or who refuses to comply with the orders of the factory inspector, properly made under the provisions of this act, or who suffers or permits any child to be employed in violation of its provisions, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than

fifty dollars for the first offense, and not more than one hundred dollars for the second offense, to which may be added imprisonment for not more than ten days, and for the third offense a fine of not less than two hundred and fifty dollars and not more than thirty days' imprisonment.

§ 21. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

(Approved March 2, 1897.)

See ch. 81, §§ 7051-7087.



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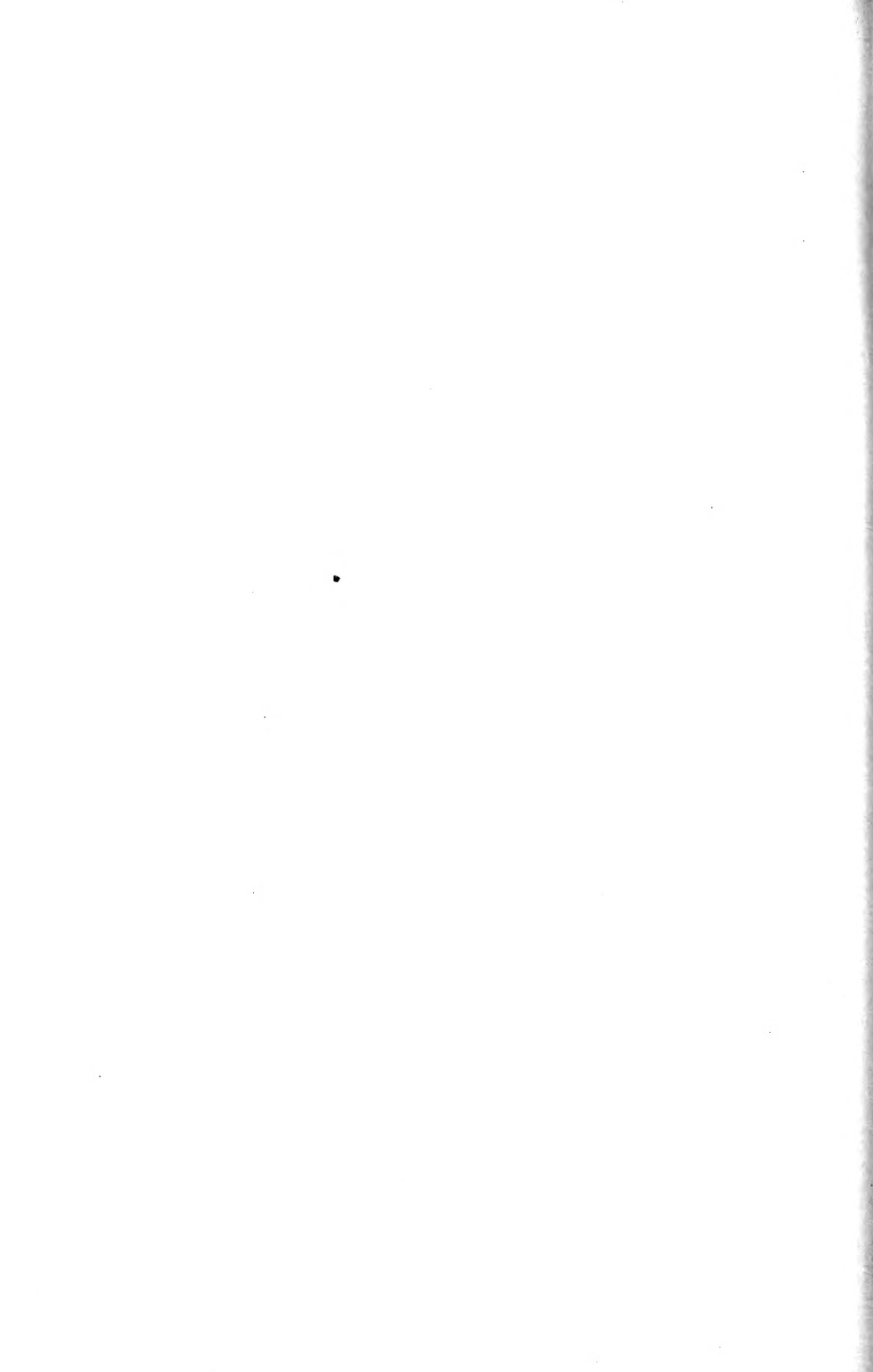
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IOWA.

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# IOWA.

## CONSTITUTION OF IOWA—1857.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Bill of Rights.

- Sec. 18. Private property not to be taken without compensation.  
21. No law shall be passed impairing obligation of contracts.

#### ARTICLE VII.

##### State Debts.

- Sec. 1. Credit of State not to be loaned to corporations.

#### ARTICLE VIII.

##### Corporations.

- Sec. 1. Corporations shall be created by general laws only.  
2. Property of all business corporations subject to taxation.  
3. State shall not assume debts of, or become stockholder in any corporation.  
12. All laws for creating corporations may be amended or repealed.

#### ARTICLE I.

##### Bill of Rights.

§ 18. Private property shall not be taken for public use without just compensation first being made, or secured to be made, to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

Foreign corporation not to acquire or hold land.  
§§ 3073, 3079.

[Power of eminent domain is a necessary attribute of sovereignty, rather than any reserved right of the granting of property to the citizen. *Noll v. R. R. Co.*, 32 Iowa, 66. Above section prohibits, by implication, the taking of private property for anything but a public use. *Bankhead v. Brown*, 25 Iowa, 540. If a public use be declared by the legislature, courts will hold such use public, unless it manifestly appears from provisions of the act that it can have no tendency to advance or promote such public use. *Id.* What constitutes a taking. *White v. R. R. Co.*, 64 Iowa, 281; s. c., 20 N. W. Rep. 436. A party cannot be deprived of his property without provision for a judicial proceeding either originally or by

appeal. *Ragatz v. Dubuque*, 4 Iowa, 343. Benefits to accrue are not to be estimated. *Deaton v. Polk Co.*, 9 Iowa, 594; *Bland v. Hixenbaugh*, 39 id. 532; *Koestenbader v. Peirce*, 41 id. 204; *Britton v. R. R. Co.*, 59 id. 540; s. c., 13 N. W. Rep. 710. Legitimate taxation not within above prohibition. *Morford v. Fuger*, 8 Iowa, 82. "Just compensation" means a fair equivalent in money, and should be precisely commensurate with the injury sustained. *Sater v. Road Co.*, 1 Iowa, 386; *Henry v. R. R. Co.*, 2 id. 288. The compensation must be ascertained in the mode prescribed by law. *McCrory v. Griswold*, 7 Iowa, 248. Payment of damages is a condition precedent to right to enter upon and take the land. *Henry v. R. R. Co.*, supra; *Danels v. R. R. Co.*, 35 Iowa, 129. A city cannot exercise right of eminent domain except the power be expressly given. *Field v. Des Moines*, 39 Iowa, 575.]

§ 21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

See Const., art. VIII, § 12; Statutes, § 1640.

[While legislature may not deprive a corporation of rights vested under its charter it may pass laws in nature of police regulations, although they may operate to surrender the use of a franchise more burdensome or less remunerative. *Rodemacher v. R. R. Co.*, 41 Iowa, 297.

The articles of incorporation, together with the general incorporation laws, create the same relation between the State and the corporation which would exist if such general laws and articles were embodied in a special legislative charter. *State v. Ry. Co.*, 71 Iowa, 410; s. c., 32 N. W. Rep. 409.]

#### ARTICLE VII.

##### State Debts.

Section 1. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the State shall never assume, or become responsible for the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the State.

#### ARTICLE VIII.

##### Corporations.

Section 1. No corporations shall be created by special laws; but the general assembly

## Corporations — Const., Art. viii, §§ 2, 3, 12.

shall provide by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided.

See §§ 1608 et seq.

§ 2. The property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals.

See Statutes, §§ 1276-1295.

[Independent of this provision, the general assembly is vested, by virtue of its general legislative authority, with power to subject all classes of property, including that of corporations, to taxation for proper purposes. *Davenport v. R. R. Co.*, 38 Iowa, 634. This section must be interpreted as imposing the duty, instead of simply granting the power, to tax property of corporations. *Id.* Their property should be taxed to same extent, for same purposes, and at same rates, as that of an individual. *Id.* This section subjects to taxation all corporations for pecuniary profit. *Dubuque v. R. R. Co.*, 39 Iowa, 57. An act releasing railroad company from liability to municipal taxation held to be in conflict with above section. *Land Co. v. County*, 39 Iowa, 173. Taxation of shares of a corporation which may have some additional value by reason of good will, etc., of the business of a corporation is not unequal taxation. *Bank v. Board*, 64 Iowa, 140; s. c., 19 N. W. Rep. 889. Different method may be prescribed for assessing railroad property than that provided for property of same nature belonging to other owners. *R. R. Co. v. Board*, 67 Iowa, 199; s. c., 52 N. W. Rep. 128.

In assessing for taxation, real estate of national

banks is deducted from value of capital stock. *Bank v. City*, 86 Iowa, 28; s. c., 52 N. W. Rep. 334. Shares of stock in national bank are credits to be deducted from gross amount of credits listed for taxation. *Id.*]

§ 3. The State shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless insured in time of war for the benefit of the State.

[This section not violated by authorizing aid to be voted by counties toward construction of a railway. *County v. R. R. Co.*, 4 G. Gr. 1. Nor by an act making an appropriation to a corporation to assist it in testing validity of barb wire patents. *Wire Co. v. Brown*, 64 Iowa, 275; s. c., 20 N. W. Rep. 434.]

§ 12. Subject to the provisions of this article, the general assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the general assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.

See Const., art. I, § 21; Statutes, § 1640.

[This section has reference exclusively to corporations for pecuniary purposes. *Ex parte Pritz*, 9 Iowa, 30.]

## STATUTES OF IOWA — 1888.

## Part First. Public Law.

TITLE I. OF THE GENERAL ASSEMBLY,  
THE STATUTES, ETC.

## CHAPTER III.

## Of the Statutes.

## Sec. 49. Rules of construction.

§ 49. (13.) The word "person" may be extended to bodies corporate.

[So held under statute as to garnishment. *Wales v. Muscatine*, 4 Iowa, 302. Above rule cannot be universally applied, especially in construing criminal statutes, because there are some crimes for which corporations cannot be punished. True rule laid down. *Stewart v. Waterloo*, 71 Iowa, 226; s. c., 32 N. W. Rep. 275.]

## TITLE VI. OF REVENUE.

## CHAPTER I.

## Of the Assessment of Taxes.

## Sec. 1276. How listed.

1289. Credits, annuities, bank notes, stock.

1293. Who a manufacturer.

1294. Manufacturing companies.

1295. Stock exempt.

§ 1276. \* \* \* The property \* \* \* of a body corporate, company, society, or partnership, [is to be listed] by its principal accounting officer, agent, or partner. \* \* \*

§ 1289. Depreciated bank notes and the stock of corporations and companies shall be assessed at their cash value; \* \* \*

[Taxation of property of a corporation to the corporation, and shares of capital stock to its stockholder, is not unconstitutional. *Cook v. Burlington*, 59 Iowa, 251; s. c., 15 N. W. Rep. 113. Real property of a private corporation is to be assessed under section 1302 of the Code. Shares of stock are, under above section, taxable in hands of owners. Whether this would amount to double taxation, quære. Appeal of the Des Moines Water Co., 48 Iowa, 324. Stockholder is taxable upon his interest in the corporate property, including surplus, as well as upon his capital stock. *Ins. Co. v. Board*, 37 N. W. Rep. 141. Shares of stock are to be taxed to the owner as his individual property. *Henkle v. Keota*, 68 Iowa, 334; s. c., 27 N. W. Rep. 250. Taxation of stock in savings bank. *Bank v. Mittelbuscher*, 4 McCrary, 361.]

Assessing a corporation for corporate stock is proper, though it owns none, if the shares of the stockholders are not assessed. *Robbins v. Magoun*, 70 N. W. Rep. 700. Assessing realty and real stock as "corporation stock," held not to defeat the assessment. Id.]

§ 1293. Any person who purchases, receives, or holds personal property of any description for the purpose of adding to the

value thereof by any process of manufacturing, packing of meats, refining, purifying, or by the combination of different materials, with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer for the purpose of this title, and he shall list for taxation the average value of such property in his hands, estimated as directed in the preceding section; but the value shall be estimated upon those materials only which enter into the combination or manufacture.

[A corporation manufacturing sewer pipes and drain tile is assessable as a manufacturer under above section. *App. of Iowa Pipe & Tile Co.*, 70 N. W. Rep. 115.

In assessing a manufacturer under above section, labor and fuel are not to be considered. Id.]

§ 1294. Corporations organized under the laws of this State for pecuniary profit, and engaged in manufacturing as defined by section eight hundred and sixteen of the Code (§ 1293), and which have their capital represented by shares of stock, shall, through their principal accounting officers, list their real estate, personal property, and moneys and credits, in the same manner as is required of individuals, and their machinery used in their manufacturing establishments shall, for the purposes of this act, be regarded as real estate.

§ 1295. The owners of capital stock of manufacturing companies, as herein provided for, having listed their property as above directed, shall be exempt from assessment and taxation.

## TITLE IX. OF CORPORATIONS.

## CHAPTER I.

## Of Corporations for Pecuniary Profit.

## Sec. 1609. Who may incorporate.

1609. Powers.

1610. Articles to be adopted, signed and recorded.

1611. Limit of indebtedness.

1612. Notice to be published.

1613. Notice to contain what.

1614. May begin business, when.

1615. Change of articles.

1616. Dissolution.

1617. Notice of.

1618. Individual liability.

1619. Duration and renewal.

1621. Penalty for fraud.

1622. Diversion of corporate funds.

1623. Dividends by insurance companies.

1624. Cause of forfeiture.

1625. Keeping false accounts.

1626. By-laws to be posted.

1627. Amount of stock and indebtedness to be posted.

- Sec. 1628. Transfer of shares.  
 1629. Non-user of franchise.  
 1630. Expiration of charter.  
 1631. Sinking fund.  
 1632. Individual liability of stockholders.  
 1633. Corporate property must be exhausted.  
 1634. Proceedings against stockholders.  
 1635. Indemnity; contribution.  
 1636. Franchise may be sold on execution.  
 1637. Court may compel production of books.  
 1638. Single individual may incorporate.  
 1639. Estoppel.  
 1640. Legislative control.

### Foreign Corporations.

- Sec. 1641. Filing articles; permit.  
 1642. Permit essential.  
 1643. Removal of causes.  
 1644. Penalty.  
 1645. Repeal.

§ 1608. Any number of people may associate themselves and become incorporated for the transaction of any lawful business, including the establishment of ferries, the construction, ownership, operation and maintenance of canals, railways, bridges or other works of internal improvement, and the purchase, ownership, operation and maintenance of any railroad sold or transferred under power of sale or foreclosure of any mortgage, deed or trust; but such incorporation confers no power or privilege not possessed by natural persons, except as hereinafter provided.

See Const., art. VIII, § 1.

§ 1609. Among the powers of such body corporate are the following:

1. To have perpetual succession;

Duration. § 1619. Dissolution. § 1616. Forfeiture. §§ 1624, 4581-4603. Expiration. § 1630.

2. To sue and be sued by its corporate name;

Estoppel to deny corporate existence when sued. § 1639. Removal of causes by foreign corporation. § 1643. Foreign corporation may bring suit. § 3759. Verne of actions. §§ 3787-3790. Manner of commencing actions. §§ 3818, 3823. Pleading. §§ 3876, 3923, 3924. Security for costs. §§ 4137, 4138. Attachments and executions. §§ 4165, 4181, 4275. Actions to test corporate rights. §§ 4581-4603. Injunctions against corporations. § 4627. Process upon an indictment against a corporation. § 5711. Arraignment. § 5712.

[A corporation must sue and be sued in its corporate name. *R. R. Co. v. Keisel*, 43 Iowa, 39. A stockholder may maintain action to restrain corporation from acts in excess of corporate power. *Teachout v. St. R. Co.*, 75 Iowa, 722; s. c., 38 N. W. Rep. 145.

The use of the word "railroad" instead of "railway" in indictment for embezzling funds of the corporation, held not to be material. *State v. Goode*, 68 Iowa, 593; s. c., 27 N. W. Rep. 772.

A railroad company cannot, in a legal proceeding, be properly designated by initial letters of its name, even though it may be shown that it is popularly known by such initial letters. *Accola v. R. R. Co.*, 70 Iowa, 185; s. c., 30 N. W. Rep. 503. A corporate name is that which is adopted in the articles of incorporation. If name is changed it must be done by change of articles,

and the best evidence as to contents of articles is the articles themselves; therefore, held, that parol evidence of a change of name was not sufficient. *R. R. Co. v. Keisel*, supra. Where name of corporation consists of several words, the omission, alteration or transposition of any of the words in the name used, if the words in the name used were synonymous with the true name, is not a misnomer. *Martin v. R. R. Co.*, 59 Iowa, 411; s. c., 13 N. W. Rep. 424. A variance from true name of a corporation will defeat its contract if it appears that the corporation was intended to be bound and described in the instrument. *Athearn v. Millersburg*, 33 Iowa, 105. Where note was made payable to order of "The Equitable Life Insurance Co. of Iowa at its office," and was dated at the "office of the Equitable Life Ins. Co., Des Moines," held, that although the two names were not identical, it was reasonably apparent that they referred to the same corporation. *Ins. Co. v. Gleason*, 56 Iowa, 47; s. c., 8 N. W. Rep. 790.

Declaration of persons related to corporation may be excluded from evidence when it is not shown that such persons were authorized to bind the corporation. *McNamara v. Corporation*, 88 Iowa, 502; s. c., 55 N. W. Rep. 322. Admission by authorized agents of corporation is admissible. 1d. That directors allowed fraudulent judgment by default, is not prima facie fraudulent. *Peatman v. Centerville L. H. & P. Co.*, 69 N. W. Rep. 541.]

3. To have a common seal, which it may alter at pleasure;

Contract of corporation need not be under seal. § 1609 (6), note.

[Signature of officer of a corporation, executing an instrument, being proved, seal will be presumed genuine in absence of proof to contrary. Burden of proof is upon party objecting to the instrument. *Blackshire v. Homestead Co.*, 39 Iowa, 624; *R. R. Co. v. Lewis*, 53 id. 101; s. c., 4 N. W. Rep. 842; *Morse v. Beale*, 65 Iowa, 463; s. c., 27 N. W. Rep. 461.

The seal itself is prima facie evidence that it was affixed to the instrument legally, by the proper authority. *Goodnow v. Oakley*, 68 Iowa, 25; s. c., 25 N. W. Rep. 912; *Blackshire v. Homestead Co.*, supra.

Corporations of all kinds may be bound by contracts not under seal. *Merrick v. Road Co.*, 11 Iowa, 74.

A valid written contract may be made by a private corporation in this State without the use of a seal, even though such contract be one out of the ordinary course of business of the corporation. *Water Co. v. Lumber Co.*, 85 Iowa, 112; s. c., 52 N. W. Rep. 108.]

4. To render the interests of the stockholders transferable;

See § 1628, and note.

[By-laws of a bank provide that no transfer of stock should be made without consent of directors by any stockholder who is liable as principal debtor or otherwise. Held, that the certificate and the by-laws constitute a contract between the bank and the defendant, creating a lien upon defendant's stock superior to that of an attaching creditor. *Bank v. Haney*, 87 Iowa, 101; s. c., 54 N. W. Rep. 61.]

5. To exempt the private property of its members from liability for corporate debts, except as herein otherwise declared.

See §§ 1618, 1632-1635.

[Corporation may exempt the private property

## Corporate powers — Stat., § 1609.

of its members from liability for corporate debts. *Spence v. Const. Co.*, 36 Iowa, 407; *Larson v. Dayton*, 52 Iowa, 59; s. c., 3 N. W. Rep. 645.

The only case in which private property of members becomes liable for corporate debts is that provided in section 1618. *Bank v. Davies*, 43 Iowa, 424.

Individual liability only extends to amount of unpaid subscription to stock. *Warfield v. Canning Co.*, 72 Iowa, 666; s. c., 34 N. W. Rep. 467.

The fact that one corporation is a stockholder in another, stockholders of former are not thereby made stockholders in latter, and cannot be held individually as such. *Langan v. Const. Co.*, 49 Iowa, 317. Exemption of corporations from personal liability must be authorized by statute. *Kaiser v. Bank*, 56 Iowa, 104; s. c., 8 N. W. Rep. 772. Stockholder receiving stock at less than its par value cannot escape liability by transferring it to an insolvent. *Wisbard v. Hausen*, 68 N. W. Rep. 691.]

6. To make contracts, acquire and transfer property, possessing the same powers in such respects as private individuals now enjoy;

Obligation of contracts inviolable. Const., art. I, § 21. Alien corporation cannot acquire lands. §§ 3073, 3079. Corporation may loan money from its sinking fund. § 1631.

[Corporations possess all incidental and implied powers necessary or proper to carry into effect its general and express powers in respect to the transaction of its business. *Ins. Co. v. Packet Co.*, 32 Iowa, 224.

Corporations possess such powers only as are expressly conferred upon them and such as are necessary to carry out those expressed powers. *Teachout v. Ry. Co.*, 75 Iowa, 722; s. c., 38 N. W. Rep. 145.

For the purpose of carrying out its objects the powers of a corporation are as extensive as those of an individual, where they are not expressly limited, and it may borrow money and execute a mortgage upon the corporate property. *Thompson v. Lambert*, 44 Iowa, 239.

Power to mortgage its property is incident to ordinary power of a corporation. *Dunham v. Isett*, 15 Iowa, 284.

The simple act of becoming surety for another is not incidental to the prosecution of any business where power to borrow money may necessarily be implied, which may be exercised by issuance of negotiable bonds. *Gas Co. v. West*, 50 Iowa, 16.

Where its articles authorized a corporation to purchase "any real estate or other property," it was not beyond its powers to purchase its own stock. *Lumber Co. v. Foster*, 49 Iowa, 25. Unless restrained by statute, one corporation may sell its property to another, if done in good faith. *Warfield v. Canning Co.*, 72 Iowa, 666; s. c., 34 N. W. Rep. 467; *State v. Ry. Co.*, 71 Iowa, 410; s. c., 32 N. W. Rep. 409. Mortgage given by a corporation to secure a debt in excess of limit prescribed by its articles is not for that reason invalid, even though given to directors and shareholders as preferred creditors. *Id.*; *Garrett v. Plow Co.*, 70 Iowa, 697; s. c., 29 N. W. Rep. 395.

A private corporation is responsible, at least to extent of the consideration received, for indebtedness assumed to be contracted in excess of limit imposed by its articles. *Humphrey v. Merc. Assn.*, 50 Iowa, 607.

The doctrine of ultra vires will be applied only when contracts remain wholly executory. *Thompson v. Lambert*, 44 Iowa, 239.

A corporation cannot retain benefits derived from an ultra vires contract, and then treat the contract as entirely void. *Lucas v. Transfer Co.*, 70 Iowa, 541; s. c., 30 N. W. Rep. 771. Every person dealing with a corporation is charged with knowledge of its power as set out in its recorded articles of incorporation. *Id.* Where a corporation contracts with third parties in regard to mat-

ters apparently within its power, but which are in fact beyond them, the corporation must be held liable for loss or damage to such third parties. *Id.*

A corporation may make a binding contract in writing not under seal, and may also be bound by verbal contracts. And may ratify the contract of an officer made outside the usual scope of his duties. *Merrick v. Road Co.*, 11 Iowa, 74. A corporation may be bound by an implied contract. *Bank v. Ins. Co.*, 66 Iowa, 617; s. c., 24 N. W. Rep. 239.

The articles of incorporation, together with the general incorporation laws, create the same relation between State and the corporation which would exist if such general laws and articles were embodied in a special legislative charter. *State v. Ry. Co.*, 71 Iowa, 410; s. c., 32 N. W. Rep. 409.

Contract by corporation to surrender its stock held to be valid in absence of any expressed prohibition. *Rollins v. Carriage Co.*, 89 Iowa, 380; s. c., 45 N. W. Rep. 1937.

Purchaser of stock may question validity of contract made by the corporation on ground that it is ultra vires, though such contract was entered into before the purchase of the stock. *Carson v. Gaslight Co.*, 89 Iowa, 638; s. c., 45 N. W. Rep. 1068.

A corporation has incidental power to make any contract necessary and proper to accomplish the objects of its creation. *Wardner, etc., Co. v. Jack*, 82 Iowa, 435; s. c., 48 N. W. Rep. 729. An officer or stockholder may enforce judgment for payment of claims against the corporation. *Rollins v. Carriage Co.*, supra.

A granting of power to make contracts gives a corporation power to sell and make conveyances of its realty. *Buell v. Buckingham*, 16 Iowa, 284. And limitation upon power to sell implies a limitation on power to convey. *Bank v. Dubuque*, 15 Iowa, 304.

Question of power of corporation to hold land is a question between the corporation and the State, and cannot be raised by third party. *R. R. Co. v. Lewis*, 53 Iowa, 101; s. c., 4 N. W. Rep. 842.

Can general superintendent of a railway be presumed to have power to alienate or charge its lands? *Kipp v. Kendall*, 55 Iowa, 65; s. c., 7 N. W. Rep. 417.

Power of such superintendent not to be proved by proving what president of company said about it. *Id.* Restriction upon power to sell property, not an inhibition upon power to mortgage it. *Krider v. Trustees*, 31 Iowa, 547.

If a company professing a corporate existence which it does not possess, acquires, in its corporate name, the property of another, and conveys the same, the sufficiency of such conveyance or transfer may be inquired into collaterally. *Carey v. R. R. Co.*, 5 Iowa, 358. And the fact whether the company ever had any corporate existence, so as to enable it to take and hold property, may be inquired into collaterally. *Id.*

An allegation of fraud and misrepresentation by a corporation is sufficient without alleging that its officers or agents did not exceed their authority. *Carey v. R. R. Co.*, 5 Iowa, 358.

A corporation is not chargeable with notice of transactions between its officers acting as private individuals in a private transaction. *Bank v. Gifford*, 47 Iowa, 575.

Director not necessarily precluded from becoming purchaser at a foreclosure sale of property of the corporation. *Hallam v. Hotel Co.*, 56 Iowa, 178; s. c., 9 N. W. Rep. 111.

A promissory note signed by president and secretary is not binding on the corporation in absence of any showing of authority or custom to execute notes. *Cuttron v. Soc.*, 46 Iowa, 106.

Contracts between officers of a corporation, by which they were to derive advantage or profit from their positions, by purchase made nominally for the company but really for themselves, is void as against the other stockholders. *Land Co. v. Walker*, 50 Iowa, 376.

A director may become a creditor of a corporation and advance it money, or sell it property, and may enforce the obligation therefor. *Garrett v. Plow Co.*, 70 Iowa, 697; s. c., 29 N. W. Rep. 395.

Where directors give authority to president and secretary to execute a note for a certain sum and interest, the insertion of an attorney's fee clause in the note was in excess of the authority, and not binding on the corporation. *Hardin v. Const. Co.*, 78 Iowa, 726; s. c., 43 N. W. Rep. 543.

A corporation organized for manufacture and sale of musical instruments may take from its agent, in payment of indebtedness due from him, a note of a third party belonging to him. *Organ Co. v. Reddish*, 51 Iowa, 55; s. c., 49 N. W. Rep. 1048.

In absence of express authority, officers cannot sell stock for less than par. *Oliphant v. Min. Co.*, 63 Iowa, 332; s. c., 19 N. W. Rep. 212; *Jackson v. Traer*, 64 Iowa, 460; s. c., 20 N. W. Rep. 764. Nor accept property largely in excess of its value in payment of stock subscription. *Osgood v. King*, 42 Iowa, 478.

Increase of salary of officer, by action of board of directors, validity of. *Clark v. Coal Co.*, 86 Iowa, 436; s. c., 53 N. W. Rep. 291.

As to powers of corporations organized under laws of Iowa, see *Reichwald v. Hotel Co.*, 106 Ill. 439; *Glover v. Wells*, 40 Ill. App. 353.]

7. To establish by-laws, and make all rules and regulations deemed expedient for the management of their affairs in accordance with law.

Copy of by-laws must be kept posted. § 1626. By-laws subject to legislative control. § 1640.

[The general power conferred upon directors to conduct affairs of a corporation carries with it as a necessary incident implied powers essential to give effect to general powers. Hence, adoption of a by-law, even in the absence of express power, is not without color of authority. *Hygum v. Ins. Co.*, 11 Iowa, 26. A by-law is entitled to a reasonable construction. Id. 25. By-law of insurance company printed in a policy is binding upon holder of policy. Id. 21.]

§ 1610. (As amended March 28, 1898, and April 7, 1898.) Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators, recorded in the office of the recorder of deeds of the county where the principal place of business is to be, in a book kept therefor, and the recorder must, within five days thereafter, indorse thereon the time when the same were filed, and the book and page where the record will be found. Said articles thus indorsed shall then be forwarded to the secretary of State, and be by him recorded in a book kept for the purpose. Such corporation shall pay to the secretary of State, before a certificate of incorporation is issued, a fee of twenty-five dollars, and, for all authorized stock in excess of ten thousand dollars, an additional fee of one dollar per thousand. Should any corporation increase its capital stock, it shall pay a fee to the secretary of State of one dollar for each one thousand dollars of such increase, but in no event shall a fee in excess of two thousand dollars be charged under the provision of this section. The recording fee shall be paid in all cases. Farmers' mutual co-operative creamery associations and corporations organized for the manufacture of sugar from beets grown in the State of Iowa shall be

exempt from the payment of the incorporation fee provided herein.

Change of articles. § 1615. Individual liability for failure to comply. § 1618. Single individual may incorporate. § 1638.

[Failure to file articles in office of secretary of State does not render stockholder individually liable. *Bank v. Davies*, 43 Iowa, 424; *Elsfeld v. Kenworth*, 50 Id. 389.]

§ 1611. Such articles of incorporation must fix the highest amount of indebtedness or liability to which the corporation is at any one time to be subject, which must in no case, except in that of risks of insurance companies, exceed two-thirds of its capital stock. Provided, That the provisions of this section shall not apply to the bonds or other railway securities to be hereafter issued or guaranteed by railway companies of this State, in aid of the location, construction and equipment of railways, to the amount of not exceeding sixteen thousand dollars per mile of single track, standard gauge, or eight thousand dollars per mile of single track, narrow gauge, lines of road for each mile of railway actually constructed and equipped. Provided, further, That the provisions of this section shall not apply to the debentures or bonds of any company, duly incorporated under the provisions of this chapter, the payment of which debentures or bonds shall be secured by an actual transfer of real estate securities for the benefit and protection of purchasers of said debentures or bonds, such securities to be at least equal in amount to the par value of such bonds or debentures, and to be first liens upon unincumbered real estate worth at least twice the amount loaned thereon.

Personal liability of shareholders. §§ 1609 (5), 1618, and note, 1632.

[Incurring of liabilities greater than here provided does not render stockholders individually liable. *Langan v. Const. Co.*, 49 Iowa, 317. A private corporation is responsible at least to the extent of the consideration received for indebtedness assumed to be contracted in excess of limit imposed by the articles of incorporation. *Humphrey v. Merc. Assn.*, 50 Iowa, 607. In such case the corporation is estopped from setting up the limit. Id. A debt of a corporation beyond limit prescribed by its charter is not invalid, even though held by the directors. The latter are in no different position than that of any creditor, if debt was contracted in good faith. *Garrett v. Plow Co.*, 70 Iowa, 697; s. c., 29 N. W. Rep. 395; *Warfield v. Canning Co.*, 72 Iowa, 666; s. c., 34 N. W. Rep. 467.

Provision in articles of incorporation that the total indebtedness "shall not at any one time exceed three hundred dollars, except by a majority vote of the stockholders present at a called or annual meeting," is a substantial compliance with provisions of above section. *Thornton v. Balcom*, 85 Iowa, 198; s. c., 52 N. W. Rep. 190.

Above section does not require that full amount of capital stock authorized by the articles shall be subscribed to before corporation may begin business, when the articles provide that the corporation may do so when a less amount therein stated is subscribed. *Sweeney v. Talcott*, 85 Iowa, 103; s. c., 52 N. W. Rep. 106.]



Notice of organization; amendments, etc. Stat., §§ 1612-1618.

§ 1612. A notice must also be published, for four weeks in succession, in some newspaper as convenient as practicable to the principal place of business.

[Acts of a corporation will not be valid unless publication of notice of organization is made as required by law. *Elsfeld v. Kenworth*, 50 Iowa, 389.

Publication of an abstract of the articles of incorporation, containing all the requirements of the notices provided for by statute and stating that "the indebtedness of the company shall not exceed three hundred dollars at any one time," is sufficient notice under above section. *Thornton v. Balcom*, 85 Iowa, 198; s. c., 52 N. W. Rep. 106.]

§ 1613. Such notice must contain:

1. The name of the corporation and its principal place of transacting business;

2. The general nature of the business to be transacted;

3. The amount of capital stock authorized, and the times and conditions on which it is to be paid in;

4. The time of the commencement and termination of the corporation;

5. By what officers or persons the affairs of the corporation are to be conducted, and the times at which they will be elected;

6. The highest amount of indebtedness to which the corporation is at any time to subject itself;

7. Whether private property is to be exempt from corporate debts.

As to contracts in excess of limits of indebtedness, see § 1611, note. Exemption of private property from corporate debts. See § 1609 (5), note.

[Where the published articles of incorporation did not state when corporation was to begin and terminate, nor where its principal place of business was to be, held not to be a substantial compliance with the statute. *Clegg v. Grange Co.*, 61 Iowa, 121; s. c., 15 N. W. Rep. 865.

When auditor in issuing certificates to a corporation cannot determine the exclusive use of a name. *Grand Lodge v. Graham*, 65 N. W. Rep. 837.

A corporation cannot appropriate the exclusive use of a name which was in use by another organization, and had a well-defined meaning, at the time of the incorporation. *Id.*]

§ 1614. The corporation may commence business as soon as the articles of incorporation are filed in the office of the recorder of deeds, and their doings shall be valid if the publication in a newspaper is made, and articles recorded in the office of the secretary of State within three months from such filing in the recorder's office.

Individual liability for failure to comply. § 1618.

[Failure to file articles in office of secretary of State within three months does not render acts of a corporation void, nor deprive it of its franchises without proceedings be instituted for that purpose. *Bank v. Davies*, 43 Iowa, 424.]

§ 1615. Any of the provisions of the articles of incorporation may be changed at any annual meeting of the stockholders or

special meeting called for that purpose; but said changes shall not be valid unless recorded and published as the original articles are required to be; and said changes in the articles need only be signed and acknowledged by the officers of said corporation.

Articles are subject to legislative control. § 1610.

[A change in the articles, if properly made, is binding upon all stockholders. *R. R. Co. v. White*, 5 Iowa, 409. But if such change adds a new and different business to that originally contemplated, stockholders who do not assent to the change will be dissolved from liability of their subscriptions. *Id.* But not where change merely relates to time of payment of installment of subscription to stock. *Id.* A corporation having entered into a contract authorized by its articles, and received the consideration therefor, cannot thereby escape liability upon ground that amended articles had not been recorded. *Humphrey v. Assn.*, 50 Iowa, 607. Articles of incorporation of company organized for pecuniary profit can be amended, how. *Day v. Ins. Co.*, 75 Iowa, 601; s. c., 38 N. W. Rep. 113. It is only a material or radical change which will release a subscriber from liability on his subscriptions. *Assn. v. Nellis*, 31 Iowa, 95; *R. R. Co. v. Preston*, 35 *Id.* 115.]

§ 1616. No corporation can be dissolved prior to the period fixed in the articles of incorporation, except by unanimous consent, unless a different rule has been adopted in their articles.

Duration. § 1618. Forfeiture. § 1621. Expiration. § 1630. Sale of franchise under execution does not dissolve. § 1636.

§ 1617. The same period of newspaper publication must precede any such premature dissolution of a corporation as is required at its creation.

§ 1618. A failure to comply substantially with the foregoing requisitions in relation to organization and publicity, renders the individual property of the stockholders liable for the corporate debts. But this section shall not be deemed applicable to railway corporations and corporations, and stockholders in railway companies shall be liable only for the amount of stock held by them in said companies.

See §§ 1609 (5), 1632.

[Under this section failure to file articles does not render stockholders individually liable. *Bank v. Davies*, 43 Iowa, 421; *Stokes v. Flindley*, 4 *McCrary*, 295; *Elsfeld v. Kenworth*, 50 Iowa, 389. In the clause "in relation to organization and publicity" the word "and" should be construed as "or." Failure in either respect will render stockholders individually liable. *Id.* So held in case of failure to publish any notice whatever. *Id.*; *Marshall v. Harris*, 50 Iowa, 182; s. c., 7 N. W. Rep. 509.

Where articles did not state principal place of business or time of commencing business, there was such failure to comply with requirements as to notice as to render stockholders individually liable. *Clegg v. Grange Co.*, 61 Iowa, 121; s. c., 15 N. W. Rep. 865. But failure to post a copy of by-laws and statement of amount of capital subscribed, etc., will not render stockholders liable. *Langum v. Const. Co.*, 49 Iowa, 317; *McKellar v. Stout*, 11 *Id.* 359. Failure to properly keep the

books, as required by statute, does not create individual liability. Those participating in fraudulent keeping of books may be made liable. *Langan v. Const. Co.*, supra. Incurring of liabilities beyond that allowed by statute does not render stockholders individually liable. *Id.* Stockholders claiming exemption under provisions of General Incorporation Law must show that company was legally incorporated; an attempt to incorporate and doing business under claim of incorporation, are not sufficient to create such exemption. *Kaiser v. Bank*, 56 Iowa, 104; s. c., 8 N. W. Rep. 772. Slight irregularities or omissions, sufficient to sustain action for forfeiture of charter, are insufficient to sustain action to enforce individual liability of stockholder. Otherwise if irregularity be material. *Id.* In suits against individuals claiming exemption from liability under General Incorporation Law, a more strict compliance with statutory requirements must be shown than in case plea of nullity of corporation is set up in suit between a corporation and the stockholder or other individual, on liability contracted. *Id.* By express provision stockholders in railway companies are not liable beyond amount of their stock. *Bank v. Davies*, 43 Iowa, 424. A construction company has power to construct and operate a railway as a railway corporation. *Langan v. Const. Co.*, 49 Iowa, 311. Liability of members of unincorporated associations. *Reed v. Anderson*, 72 Iowa, 498; s. c., 34 N. W. Rep. 390. While a material defect in organization may render corporations incidentally liable as to creditors, as between themselves their rights are to be determined by the agreements in the articles. *Heald v. Owen*, 79 Iowa, 23; s. c., 41 N. W. Rep. 210. Persons dealing with a corporation as such, before time that notice of incorporation is required to have been published, is not entitled, under section 1618, to have the individual property of stockholders subjected to payment of a debt of the corporation growing out of such dealing, upon ground that publication of the notice was not completed before expiration of three months after recording of articles as required by section 1614. Actual notice supercedes publication of. *Thorn-ton v. Balcom*, 85 Iowa, 198; s. c., 52 N. W. Rep. 190.]

§ 1619. Corporations for the construction of any work of internal improvement, or for the business of life insurance, may be formed to endure fifty years; those formed for other purposes cannot exceed twenty years in duration, but in either case they may be renewed, from time to time, for periods not greater respectively than was at first permissible, if three-fourths of the votes cast at any regular election for that purpose be in favor of such renewal, and if those wishing a renewal will purchase the stock of those opposed to the renewal at its fair current value.

Dissolution. § 1616. Forfeiture. § 1624. Expiration. § 1630.

§ 1621. Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall subject those guilty thereof to fine and imprisonment, or both, at the discretion of the court. Any person who has sustained injury from such fraud, may also recover damages therefor against those guilty of participating in such fraud.

Keeping false accounts. § 1625.

[Mere intention to deceive not sufficient to render stockholders liable. There must be some act

fraudulently done. *Miller v. Bradish*, 69 Iowa, 278; s. c., 28 N. W. Rep. 594. Mere fact that a person is a stockholder in an insolvent corporation does not render him liable; a fraud in such case is not to be presumed. *Spense v. Const. Co.*, 36 Iowa, 407. In action to make individual officers liable under above section, proof of absence of intentional fraud and diversion of assets to their own use is a complete defense. This section applies only to those guilty of intentional fraud. *Hoffman v. Dickey*, 54 Iowa, 135; s. c., 6 N. W. Rep. 174. In an action for damages under this section, the particular respect in which defendant failed to comply with articles, or the particular act of deception, resulting in damage to plaintiff, must be specified. *White v. Hosford*, 37 Iowa, 566. Officers of bank illegally organized held personally liable. *Allen v. Pegram*, 16 Iowa, 163.

Stock issued by a mining company to fuel agent of a railway company, he agreeing to make the purchase of coal for railway company from mining company, receiving compensation for his services as such agent, and dividends from said mining corporation, held, that such stock was not issued for a fraudulent purpose. *Clark v. Coal Co.*, 86 Iowa, 436; s. c., 55 N. W. Rep. 291. Such a contract is not void as against public policy, but voidable only. *Id.*]

§ 1622. The diversion of the funds of the corporation to other objects than those mentioned in their articles and in the notices published as aforesaid, if any person be thereby injured, and the payment of dividends which leave insufficient funds to meet the liabilities of the corporation, shall be deemed such frauds as will subject those therein concerned to the penalties of the preceding section, and such dividends, or their equivalent, in the hands of individual stockholders shall be subject to said liabilities.

[To make officers liable under this section it must appear that entire property of corporation is not sufficient to pay its indebtedness. Dividends may be declared though corporation has not cash on hand sufficient to pay all its liabilities. *Miller v. Bradish*, 69 Iowa, 278; s. c., 28 N. W. Rep. 594. The amount of capital stock is not to be included in determining whether liabilities of corporation exceed its funds so as to render declaration of dividend illegal. *Id.* Sufficient if corporation has enough assets to pay all its debts at the time dividend is paid. *Id.*]

§ 1623. Dividends by insurance companies, made in good faith before their knowledge of the happening of actual losses, are not intended to be prevented or punished by the provisions of the preceding section.

§ 1624. Either such failure, or the practice of fraud in the manner hereinbefore mentioned, shall cause a forfeiture of all the privileges hereby conferred, and the courts may proceed to wind up the business of the corporation by an information in the manner prescribed by law.

See §§ 4581–4603.

§ 1625. The intentional keeping of false books or accounts by any corporation, whereby any one is injured, is a misdemeanor on the part of those concerned therein, and any person shall be presumed to be concerned therein whose duty it was to

By-laws; statement of capital; transfer, etc.—Stat., §§ 1626–1629.

see that the books and accounts were correctly kept.

§ 1626. A copy of the by-laws of the corporation, with the name of all its officers appended thereto, must be posted in the principal place of business, and be subject to public inspection.

See § 1609 (7).

§ 1627. A statement of the amount of capital stock subscribed, the amount of capital actually paid in, and the amount of the indebtedness in a general way, must also be kept posted up in a like manner; which statement must be corrected as often as any material change takes place in relation to any part of the subject-matter of such statement.

Failure to comply with sections 1626, 1627 does not render stockholders individually liable. See § 1618, note.

§ 1628. (As amended April 14, 1896.) The transfer of shares is not valid, except as between parties thereto, until it is regularly entered on the books of the company, so as to show the name of the person by, and to whom transferred, the number or other designation of the shares and the date of the transfer; but such transfer shall not in any way exempt the person making it from any liability of said corporation created prior thereto. The books of the company must be so kept as to show intelligibly the original stockholders, their respective interests, the amount paid on their shares, and all transfers thereof; and such books, or a correct copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same. And provided further that when any shares of stock shall be transferred to any corporation as collateral security, such corporation may notify the secretary of the corporation whose stock is transferred as aforesaid, and from the time of such notice and until notice that said stock shall have ceased to be held as collateral security said stock so transferred and noticed as aforesaid shall be considered in law as transferred on the books of the corporation which issued said stock without any actual transfer on the books of such corporation of such stock. In such case it shall be the duty of the secretary or cashier of the corporation to which such stock shall have been transferred as collateral security at once upon its ceasing to be so held to inform the secretary of the corporation issuing such stock of such fact. The secretary of the company whose stock is transferred as collateral shall keep a record showing such notice of transfer as collateral, and notice of discharge as collateral, subject to public inspection; And provided, further,

That no holder of stock as collateral security shall be liable for assessments on the same.

See § 1609 (4).

[Under above section, a stockholder who transfers his stock remains liable to creditors of the corporation whose debts were contracted before the transfer to the amount unpaid on the stock. *White v. Green*, 70 N. W. Rep. 182.

Stockholder receiving stock at less than par value cannot escape liability by transferring it to an insolvent. *Wishard v. Hansen*, 68 N. W. Rep. 691.

This section is for protection of the company, and only applies where sale or transfer of stock in some way conflicts with its interests. *Moore v. Walker*, 46 Iowa, 164.

Transferee may hold stock and enforce transfer thereof in proper form in absence of any right or lien of the company to or upon such stock, provisions of by-laws to contrary notwithstanding. *Bank v. Wasson*, 48 Iowa, 336.

In absence of provisions of charter or by-laws, or special contract, a corporation has no implied lien upon shares of stockholder to secure his indebtedness to it, and his transfer of such stock is valid though not assented to by directors. *Id.*

Shares of stock of a corporation are the property of the shareholder, and he has the absolute right of sale and alienation. *Hershire v. Bank*, 35 Iowa, 272.

Written assignment and delivery of certificates coupled with authority to transfer upon company's books vests title to stock in transferee. *Court-right v. Deeds*, 37 Iowa, 503.

Transfer of stock on books of a corporation upon surrender of previous certificate is sufficient to bind corporation and third persons to such transfer without issuance of a stock certificate. *Bank v. Gifford*, 47 Iowa, 575.

Transfer not entered on books is valid as between the parties, but not as against attaching creditor, unless the latter had knowledge of the transfer. *Lumber Co. v. Bank*, 71 Iowa, 270; s. c., 32 N. W. Rep. 336.

If the books of a corporation are fraudulently kept those guilty may be held liable under section 1621, but it does not render stockholders individually liable. *Langan v. Const. Co.*, 49 Iowa, 317.

Unless so provided in charter or by-laws, a corporation cannot refuse to execute or recognize a transfer on ground that stock has not been fully paid. *Bank v. Wasson*, 48 Iowa, 336.

Transfer of stock is not valid as against levy of execution until it is regularly entered upon books of company. *Moore v. Opera House Co.*, 81 Iowa, 45; s. c., 16 N. W. Rep. 759.

A certificate of stock in a corporation is not a negotiable instrument. *Clark v. Coal Co.*, 86 Iowa, 436; s. c., 33 N. W. Rep. 291.

Who estopped, as against a pledgee, from denying validity of a transfer of stock. *Trust Co. v. Des Moines*, 66 N. W. Rep. 914. Who estopped from claiming a lien as against a pledgee. *Id.*

One to whom stock is transferred, without any notice of any by-law making it liable for debts of the holder to the corporation, will be held to take free of any lien. *Des Moines v. Bank*, 66 N. W. Rep. 154.]

§ 1629. Any corporation organized in accordance with the provisions of this chapter, shall cease to exist by the non-user of its franchises for two years at any one time, but such body shall not forfeit its franchises by reason of its omission to elect officers, or to hold meetings at any time prescribed by the articles of incorporation or by-laws, provided such act be done within two years of the time appointed therefor.

Forfeiture of franchises. §§ 4581-4603.

## Sinking fund; liability of stockholders — Stat., §§ 1630-1634.

§ 1630. Corporations whose charters expire by their own limitation, or the voluntary act of the stockholders, may, nevertheless, continue to act for the purpose of winding up their concerns.

[Corporation will be kept alive by statute for purpose of winding up its business. *R. R. Co. v. Horton*, 38 Iowa, 33, 45. A voluntary dissolution does not affect its powers to act for purpose of winding up its affairs, and does not affect right of a creditor, in equity at least, to be released from inequitable consequences of such dissolution. *Turn Verein v. Funck*, 18 Iowa, 469.]

§ 1631. For the purpose of repairs, rebuilding, or enlarging, or to meet contingencies, or for the purpose of a sinking fund, the corporation may establish a fund which they may loan, and in relation to which they may take the proper securities.

## Powers of corporations. § 1609.

§ 1632. Neither anything in this chapter contained, nor any provisions in the articles of incorporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors, and execution against the company may, to that extent, be levied upon the private property of any such individual.

Limit of indebtedness. § 1611. Personal liability. §§ 1609 (5), 1618. Proceedings against stockholders. § 1634.

[Such liability should be enforced by a pro rata apportionment. *Hablitzel v. Latham*, 55 Iowa, 550. Officers of a corporation cannot issue stock to a creditor at less than par value with agreement that it is to be paid-up stock. Creditor so accepting stock becomes liable as holder of unpaid stock to extent that par value exceeds debt for which it is taken. *Jackson v. Traer*, 64 Iowa, 469; s. c., 20 N. W. Rep. 764. A creditor thus accepting stock becomes a stockholder as much as though he had subscribed for it. Subscription is only necessary to render a person a stockholder where the stock is not delivered. *Id.* The fact that the stock was worthless at time of its issuance and acceptance does not relieve a stockholder, accepting it, from liability. *Id.* But, on these points, see *Clark v. Bever*, 31 Fed. Rep. 670. Unless expressly authorized, officers of a corporation cannot sell stock at less than par. *Oliphant v. Mining Co.*, 63 Iowa, 332; s. c., 19 N. W. Rep. 212. Where stock of a company has all been issued as paid-up stock, the public has the right to assume that it has been paid for in full either in money or property at a fair value. *Goff v. Windmill Co.*, 62 Iowa, 691; s. c., 18 N. W. Rep. 397. Where the corporation, contrary to statute, but by agreement of stockholders, issues certificate of paid-up stock when only a pro rata portion has in fact been paid, this may be ground for proceeding to wind up the concern, but not for one subscriber, a party to the unlawful undertaking, to have his contract of subscription set aside and pro rata payment refunded. Where the corporation was organized for manufacture of a patented article, and all the stock was taken by defendants for their interest in the patent, which proved worthless, held that they were personally liable to creditors of corporation to extent of stock so taken by them severally, under sections 1632 and 1634. *Chisholm v. Forny*, 65 Iowa, 333; s. c., 21 N. W. Rep. 664. Officers of a corporation cannot release stock-

holder, to prejudice of creditors, from his obligation to pay his subscription unless transaction is in every respect fair. *Osgood v. King*, 42 Iowa, 478. Where president gave a mortgage to corporation in payment for his stock, he could not afterward surrender such stock and receive back the mortgage after insolvency of company. *Burnham v. Ins. Co.*, 36 Iowa, 632. Liability of stockholder under National Bank Act. *Hale v. Walker*, 31 Iowa, 344. The corporation cannot, by any arrangement upon its part, release a subscriber from his liability. Fact that subscription was to be paid in property instead of money does not so release him. *Singer v. Given*, 61 Iowa, 93; s. c., 15 N. W. Rep. 858. A stockholder cannot, as against creditor, set up claims for services, or for use of property, for which corporation is indebted to him. *Id.* A railroad company may, in good faith, release a stockholder from liability, either with or without consent of creditors and other stockholders. *Gelpeke v. Blake*, 19 Iowa, 263. Execution against corporation can be levied on private property of a stockholder only after judgment has been obtained against him as provided in section 1634. *Bayliss v. Swift*, 40 Iowa, 648. See, also, *Hampson v. Wear*, 4 id. 13; *Bailey v. R. R. Co.*, 13 id. 97. In case of failure to comply with the statute in reference to organization and notice, rendering a stockholder individually liable, he becomes so primarily, and may be sued in the first instance. His relation to creditors is the same as if no attempt had been made to incorporate. *Marshall v. Harris*, 55 Iowa, 182; s. c., 7 N. W. Rep. 509.

A parol subscription to stock is valid in absence of any statute or provision in the articles of incorporation requiring such agreement to be in writing. *Sav. Bank v. Hotel Co.*, 88 Iowa, 4; s. c., 55 N. W. Rep. 67.

A subscriber to stock of a corporation is liable to garnishment for amount due on such subscription. *Supra.*

§ 1633. In none of the cases contemplated in this chapter, can the private property of the stockholders be levied upon for the payment of corporate debts, while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and if he neglects to point out any such property.

[The fact of demand and refusal may be shown by the official return of the execution, which return must be regarded as conclusive, though evidence may be introduced to show that no such return was made. *Singer v. Given*, 61 Iowa, 93; s. c., 15 N. W. Rep. 858.]

§ 1634. Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against him, in any stage of which he may point out corporate property subject to levy; and upon his satisfying the court of the existence of such property, by affidavit or otherwise, the cause may be continued, or execution against him stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but, if a demand of property has been made as contemplated in the preceding

section, the costs of said action shall in any event, be paid by the company or the defendant therein, but he shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion.

[It is competent for a court, under above section, to render judgment against delinquent stockholder, in an action founded in a judgment against the corporation. *Singer v. Given*, 61 Iowa, 94; s. c., 15 N. W. Rep. 858. To charge a stockholder it must appear that there was a valid claim against the corporation. *Corse v. Sandford*, 14 Iowa, 235.

The issue of stock to promoters for property taken at a gross valuation, held fraudulent as to creditors. *Wishard v. Hansen*, 68 N. W. Rep. 691.

Evidence held to justify a finding that defendant stockholder was chargeable with notice of the fact, that the stock held by him was originally issued for less than its par value. *Id.*

The burden is on stockholder to show that he was an innocent purchaser without notice of inadequacy of the price originally paid on the issue of stock. *Id.*]

§ 1635. When the private property of a stockholder is taken for a corporate debt, he may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution.

§ 1636. The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraisalment.

Dissolution. § 1616.

§ 1637. In any proceedings by or against a corporation, or against a stockholder, to charge his private property or the dividends received by him, the court is invested with power to compel the officers to produce the books of the corporation, on the motion of either party, upon a proper cause being shown for that purpose.

§ 1638. A single individual may entitle himself to all the advantages of this chapter, provided he complies substantially with all its requirements, omitting those which from the nature of the case are inapplicable.

§ 1639. No body of men acting as a corporation under the provisions of this chapter, shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation; nor shall any person sued on a contract made with such a corporation, or sued for an injury to its property, or a wrong done to its interest, be permitted to set up a want of such legal organization in his defense.

[Person having contracted with a de facto corporation will not be permitted to question legal existence of such corporation as a defense to an action on such contract. Legality of incorporation will not be inquired into collaterally, but only in

a direct proceeding instituted by the State for that purpose. *College v. Duke*, 14 Iowa, 14; *Same v. Tedford*, *id.*; *Mach. Co. v. Snow*, 32 *id.* 423; *Courtright v. Deeds*, 37 *id.* 511. So also failure of a corporation to manage and conduct its business at places required by law cannot be successfully pleaded as a defense. *Courtright v. Deeds*, 37 Iowa, 504. The execution of a mortgage to a corporation admits its corporate existence, and estops mortgagor from denying same. *Franklin v. Twogood*, 18 Iowa, 516. And where the corporation seeks to enforce a bequest in a will, its claim cannot be resisted because of defective organization. *Quinn v. Shields*, 62 Iowa, 129; s. c., 17 N. W. Rep. 437. And a corporation having entered into a contract and received benefits thereof is estopped from denying its own existence. *Humphrey v. Assn.*, 50 Iowa, 607. An action begun by a corporation cannot be defeated on ground that its officers were not legally elected. *Carrothers v. Spring Co.*, 61 Iowa, 681; s. c., 17 N. W. Rep. 43. Above section does not apply, when. (*College v. Duke*, supra, distinguished.) *Kirkpatrick v. Church*, 63 Iowa, 373; s. c., 19 N. W. Rep. 272.

What acts would constitute "acting as a corporation" under above section? *Kirkpatrick v. Church*, 63 Iowa, 373; s. c., 19 N. W. Rep. 272. Where corporation has entered into a contract authorized by its amended articles, and received the consideration therefor, it cannot interpose defense that such amended articles had not been recorded. *Humphrey v. Assn.*, 50 Iowa, 607. The estoppel provided for by this section applies only to a body of men acting as a corporation for pecuniary profit. *Kirkpatrick v. Church*, supra. When objection of illegal organization can be taken only by proceeding by quo warranto. *Quinn v. Shields*, 62 Iowa, 129; s. c., 17 N. W. Rep. 437.]

§ 1640. The articles of incorporation, by-laws, rules, and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall, at all times, be subject to legislative control, and may be, at any time, altered, abridged, or set aside by law, and every franchise obtained, used, or enjoyed by such corporation, may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good.

Articles may be changed by stockholders. § 1615. See Const., art. I, § 21; art. VIII, § 12.

### Foreign Corporations.

§ 1641. Hereafter any corporation for pecuniary profit other than for carrying on mercantile or manufacturing business organized under the laws of any other State or of any territory of the United States or of any foreign country desiring to transact its business, or to continue in the transaction of its business in this State shall be and hereby is required, on and after September, (first) A. D., 1886, to file with the secretary of State a certified copy of its articles of incorporation duly attested, accompanied by a resolution of its board of directors or stockholders, authorizing the filing thereof and also authorizing service of process to be made upon any of its officers or agents in this State engaged in transacting its business, and requesting the issuance to such

corporation of a permit to transact business in this State. Said application to contain a stipulation that said permit shall be subject to each of the provisions of this act. And thereupon the secretary of State shall issue to such corporation a permit in such form as he may prescribe for the general transaction of the business of such corporation. And upon the receipt of such permit such corporation shall be permitted and authorized to conduct and carry on its business in this State. Provided, That nothing in this act contained shall be construed, to prevent any foreign corporations, from buying, selling, and otherwise dealing, in notes, bonds, mortgages, and other securities, or from enforcing the collection of the same, in the federal courts, in the same manner, and to the same extent, as is now authorized by law.

Non-residents prohibited from acquiring title to real estate. §§ 3073, 3079. Foreign corporation may bring suit in this State. § 3759. But must give security for costs. §§ 4137, 4138.

§ 1642. No foreign corporation which has not in good faith complied with the provisions of this act, and taken out a permit, shall hereafter be authorized to exercise the power of eminent domain or exercise any of the rights and privileges conferred upon corporations until they have so complied herewith and taken out such permit.

§ 1643. Any foreign corporation sued or impleaded in any of the courts of this State upon any contract made or executed in this State or to be performed in this State or for any act or omission, public or private, arising, originating, or happening in the State, who shall remove any such cause from such State court into any of the federal courts held or sitting in this State, for the cause that such corporation is a non-resident of this State or a resident of another State than that of the adverse party, or of local prejudice against such corporation, shall thereupon forfeit and render null and void any permit issued or authority granted to such corporation to transact business in this State; such forfeiture to be determined from the record of removal, and to date from the date of filing of the application on which such removal is affected (effected), and whenever any corporation shall thus forfeit its said permit no new permit shall be issued to it for the space of three months, unless the executive council shall for satisfactory reasons cause it to be issued sooner.

[This statute is unconstitutional for the reason that it makes the stipulation not to remove cases to the federal courts a condition for obtaining the permit to do business. *Barron v. Burnside*, 121 U. S. 186; s. c., 7 Sup. Ct. Rep. 931.]

§ 1644. Any foreign corporation that shall carry on its business and transact the same on and after September 1, 1886, in the State of Iowa by its officers, agents, or otherwise,

without having complied with this statute and taken out, and having a valid permit shall forfeit and pay to the State for each and every day in which such business is transacted and carried on the sum of one hundred dollars to be recovered by suit in any court having jurisdiction. And any agent, officer or employe who shall knowingly act or transact such business for such corporation when it has no valid permit as provided herein shall be guilty of a misdemeanor and for each offense shall be fined not to exceed one hundred dollars or imprisoned in the county jail not to exceed thirty days and pay all costs of prosecution.

§ 1645. All acts and parts of acts inconsistent with the provisions hereof are hereby repealed; Provided, That nothing contained in this act shall relieve any company, corporation, association or partnership from the performance of any duty or obligation now enjoined upon them or required of them or either of them by the laws now in force.

## Part Second. Private Law.

### TITLE XIII. OF RIGHTS OF PROPERTY.

#### CHAPTER I.

#### Rights of Aliens.

Sec. 3073. Non-resident prohibited from acquiring title to real estate.  
3079. Act does not apply to resident aliens.

§ 3073. (As amended April 14, 1896.) Non-resident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this country, one-half of the stock of which is owned or controlled by non-resident aliens, are prohibited from acquiring title to or holding any real estate in this State, except as hereinafter provided, \* \* \* Provided, That nothing in this act contained shall prevent aliens from having or acquiring property of any kind within the corporated limits of any city or town in the State or lands not to exceed three hundred and twenty acres in the name of one person or any stock in any corporation for pecuniary profit or from alienating or devising the same. The provisions of this chapter shall not affect the distribution of personal property and shall apply to real estate heretofore devised or descended when no proceedings or forfeiture have been commenced.

Rights and requirements of foreign corporations.  
§§ 1641-1645. Rights to acquire property. § 1609 (6).

§ 3079. This act shall not apply to aliens who are residents of the State of Iowa, who shall have the same right to acquire, hold and dispose of property as natural-born citizens of the United States.

Actions — Stat., §§ 3759, 3787-3790, 3817, 3818.

### Part Third. Code of Civil Practice.

#### TITLE XVIII. OF PROCEDURE IN COURTS OF ORIGINAL JURISDICTION.

##### Ch. 3. Parties to an action.

4. Of place of bringing suit.
6. Of the manner of commencing actions.
8. Of pleading.
15. Of security for costs.

#### CHAPTER III.

##### Parties to an Action.

###### Sec. 3759. Foreign corporations.

§ 3759. Foreign corporations may bring suit in the courts of this State in their corporate name.

Must give security for costs. § 4137. Attachment of stock. § 4181. Requirements of foreign corporations. § 1641.

#### CHAPTER IV.

##### Of Place of Bringing Suit.

###### Sec. 3787. Actions against common carriers.

3788. Against construction companies.
3789. Against insurance companies.
3790. Office of agency in county.

§ 3787. Actions may be brought against railway corporations, the owners of mail stages, or other line of coaches or cars, including express companies, car companies, telegraph and canal companies, and the lessees, companies, or persons operating the same, in any county through which the line or road thereof passes, or is operated.

Right to sue and be sued. § 1609 (1).

[Railroad company has a residence in any county through which its road passes and in which it transacts business. *Baldwin v. R. R. Co.*, 5 Iowa, 518; *Richardson v. R. R. Co.*, 8 id. 260. Action against foreign railway company not having any office or line of railway within the State cannot be brought in the State on a cause of action arising elsewhere by means of service on an agent found here. *Canning Co. v. R. R. Co.*, 24 Fed. Rep. 866. Bringing cars within the State for purpose of exhibition does not authorize service upon a foreign corporation owning such cars. *Carpenter v. Air Brake Co.*, 32 Fed. Rep. 434. Railway companies are subject to jurisdiction of our courts the same as any person resident within the State. *Mooney v. R. R. Co.*, 60 Iowa, 346; s. c., 14 N. W. Rep. 343. Provision as to telegraph companies is applicable to telephone companies. *Franklin v. Tel. Co.*, 69 Iowa, 97; s. c., 28 N. W. Rep. 461.]

§ 3788. An action may be brought against any corporation, company, or person, engaged in the construction of a railway, telegraph line, or canal, on any contract relating thereto, or to any part thereof, or for damages in any manner growing out of the work thereon, in any county where such contract was made, or performed in whole or in part, or where the work was done out of which arose the damage claimed.

[Venue of such actions will not be changed,

when. *Vaughn v. Smith*, 58 Iowa, 553; s. c., 12 N. W. Rep. 604; *Jordan v. Kavanaugh*, 63 Iowa, 152; s. c., 18 N. W. Rep. 851.]

§ 3789. Insurance companies may be sued in any county in which is kept their principal place of business, in which was made the contract of insurance, or in which the loss insured against occurred.

[Under this section an action may be brought before a justice of the peace against an insurance company in a county other than that of its residence. *Hunt v. Ins. Co.*, 67 Iowa, 742; s. c., 24 N. W. Rep. 745. Suit may be brought in the county where the loss occurs. *Ins. Co. v. Granger*, 62 Iowa, 272; s. c., 17 N. W. Rep. 504.]

§ 3790. When a corporation, company, or individual, has an office or agency in any county for the transaction of business, any suits growing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located.

Right of corporation to sue and be sued. § 1609 (2), note. Service of summons. §§ 3818, 3823. Verification of pleadings. §§ 3876 et seq. Security for costs. §§ 4137-4138.

[The provisions of this section are permissive, not mandatory. *Dean v. White*, 5 Iowa, 266. Under this section a suit growing out of or connected with the business of soliciting policies of insurance in any county may be brought in that county. *Life Assn. v. Walker*, 50 Iowa, 75. This section merely designates where suit shall be brought, without defining the manner in which jurisdiction over the person is to be acquired. *Id.* It does not limit the right to commence a suit in the county where the agency is located to the time during which the agency exists. *Ockerson v. Burnham*, 63 Iowa, 570; s. c., 19 N. W. Rep. 676. The office or agency is one established for the purpose of carrying on the business for which the corporation is organized. *Carpenter v. Air Brake Co.*, 32 Fed. Rep. 434.]

#### CHAPTER VI.

##### Of the Manner of Commencing Actions.

###### Sec. 3817. Summons, how served on corporations.

3818. Service on agent of corporation.
3823. Service by publication.

§ 3817. When the action is against a municipal corporation, service may be made on the mayor or clerk, and if against any other corporation, on any trustee or officer thereof, or on any agent employed in general management of its business, or on any of the last known or acting officers of said corporation, and if no person can be found on whom service can be made as provided in this and the preceding section,\* service may be made by publication as provided in other cases.

§ 3818. When a corporation, company, or individual, has, for the transaction of any business, an office or agency in any county other than that in which the principal re-

\*Relating to service upon railroad corporations.

sides, service may be made on any agent or clerk employed in such office or agency, in all actions growing out of or connected with the business of that office or agency.

See § 1609 (2), note; § 3790, note.

[This section does not warrant service upon one agent, in an action growing out of the business of another and former agent, who conducted a different office in the same town, and a notice so served does not give jurisdiction over principal. *Ins. Co. v. Granger*, 62 Iowa, 272; s. c., 17 N. W. Rep. 504.]

It allows service upon an agent in a suit against the principal in matters connected with the agency, but does not give jurisdiction over the principal by a notice of garnishment in a proceeding for collection of a debt from the agent in no manner connected with the agency. *Mfg. Co. v. Stewart*, 61 Iowa, 209; s. c., 16 N. W. Rep. 84.

Service on a local soliciting agent in an insurance company is sufficient. It is not necessary that he should be a general agent, have an office or transact all the company's business in the county. *Ins. Co. v. Highsmith*, 44 Iowa, 330.

Notice upon an agent whose agency has expired, but who was still acting as such for the completion of the business, was properly served upon him. *Gross v. Nichols*, 72 Iowa, 239; s. c., 33 N. W. Rep. 653.]

§ 3823. Service may be made by publication, when an affidavit is filed that personal service cannot be made on the defendant within this State, in either of the following cases:

5. In actions brought against a non-resident of this State or a foreign corporation, having in this State property or debts owing to such defendant sought to be taken by any of the provisional remedies, or to be appropriated in any way.

[Statute permitting service by publication must be strictly construed. *Hartley v. Boynton*, 5 McCrary, 453; *Smith v. Smith*, 4 G. Gr. 266; *Tunis v. Withrow*, 10 Iowa, 305; *Bardsley v. Hens*, 33 id. 157.]

## CHAPTER VIII.

### Of Pleading.

Sec. 3876. Verification by corporation.

3923. Corporate capacity to be averred.

3924. Corporate capacity, how controverted.

§ 3876. Where a corporation is a party, the affidavit may be made by any officer thereof.

§ 3923. A plaintiff suing as a corporation, \* \* \* or in any other way implying corporate \* \* \* capacity, need not state the facts constituting such capacity or relation, but may aver generally, or as a legal conclusion, such capacity or relation; and where a defendant is held in such capacity or relation a plaintiff may aver such capacity or relation in the same general way.

Right to sue and be sued. § 1609 (1).

[Corporate capacity must be averred, whether corporation is plaintiff or defendant, and a failure to do so will be ground for demurrer. *Sweet v. Ervin*, 54 Iowa, 101; s. c., 6 N. W. Rep. 156; *Byington v. R. R. Co.*, 11 id. 502. An action in a

name which is not that of the corporation cannot be maintained. *Steamboat v. Wilson*, 11 Iowa, 479.]

§ 3924. If either of the allegations contemplated in the three preceding sections is controverted, it shall not be sufficient to do so in terms contradictory of the allegation, but the facts relied on shall be specially stated.

[A general allegation of corporate capacity is sufficient, and a bare denial will not put in issue corporate existence. *Stier v. City*, 41 Iowa, 353. But where a defendant sued is a corporation, answer denying that it was a corporation, or had ever been organized or attempted to be organized as such, such denial was held sufficient under this section. *Polson v. Freight Line*, 54 Iowa, 490; s. c., 6 N. W. Rep. 702. In an action of a receiver a mere denial that he has properly qualified as such is not sufficient to put such fact in issue, but the facts relied on should be specifically pleaded. *Goodhue v. Daniels*, 54 Iowa, 19; s. c., 6 N. W. Rep. 129. A general denial does not put in issue the existence of a corporation and its capacity to sue. *Blackshire v. Homestead Co.*, 39 Iowa, 624. In an action against a railroad company, an allegation that it was consolidated with another company before the commencement of the action need not be specifically denied. A general denial of each and every allegation of the petition is sufficient. *Koons v. Ry. Co.*, 23 Iowa, 493. Objection that petition contains no averment of corporate existence of defendant is too late after judgment, and constitutes no ground for motion in arrest. *Andre v. R. R. Co.*, 30 Iowa, 107.]

## CHAPTER XV.

### Of Security for Costs.

Sec. 4137. When required.

4138. Action dismissed for want of.

§ 4137. If a defendant shall, at any time before answering, make and file an affidavit stating that he has a good defense in whole or in part, the plaintiff, if he be a non-resident of this State or a private or foreign corporation, before any other proceeding in the cause shall file in the clerk's office a bond, with a sufficient security to be approved by the clerk, for the payment of all costs which may accrue in the action in the court in which it is brought or in any other to which it may be carried, either to the defendant or to the officers of the court. The application for such security shall be by motion, filed with the case, and the facts supporting it must be shown by affidavits annexed thereto, which may be responded to by counter-affidavits on or before the hearing of the motion, and each party shall file all his affidavits at once, and none thereafter.

[These provisions apply to both domestic and foreign corporations. *Ins. Co. v. Henderson*, 38 Iowa, 446. But are not applicable to proceedings in justices' courts. *Smith v. Humphrey*, 15 Iowa, 428.]

§ 4138. An action in which a bond for costs is required by the last section, shall be dismissed if a bond is not given in such time as the court may allow.



Attachments, etc.; actions to test, etc.—Stat., §§ 4165, 4181, 4275, 4581–4586.

## TITLE XVIII. OF ATTACHMENTS AND EXECUTIONS.

- Ch. 1. Attachments and garnishments.  
2. Executions.

### CHAPTER I.

#### Attachments and Garnishments.

- Sec. 4165. What petition for attachment must state.  
4181. What may be attached and how.

§ 4165. The petition which asks an attachment must in all cases be sworn to. It must state:

1. That the defendant is a foreign corporation, or acting as such; \* \* \*

§ 4181. Stock or interest owned by the defendant in any company, and also debts due him, or property of his held by third persons, may be attached, and the mode of attachment must be as follows:

3. Stock in a company is attached by notifying the president or other head of the company, or the secretary, cashier, or other managing agent thereof, of the fact that the stock has been so attached.

[Shares of stock of a corporation could not be levied on at common law, and the only method now is that provided by this section. *Moor v. Walker*, 46 Iowa, 164. Attaching creditor acquires priority over a transfer of the stock which does not appear on the books of the company. See § 1628; *Lumber Co. v. Bank*, 71 Iowa, 270; s. c., 32 N. W. Rep. 336.]

### CHAPTER II.

#### Executions.

- Sec. 4275. Execution against stock in corporation.

§ 4275. Stock or interests owned by the defendant in any corporation, and also debts due him, and property of his in the hands of third persons, may be levied upon in the same manner provided for attaching the same.

## TITLE XX. OF PROCEDURE IN PARTICULAR CASES.

- Ch. 6. Of actions to test official and corporate rights.  
9. Injunctions.

### CHAPTER VI.

#### Of Actions to Test Official and Corporate Rights.

- Sec. 4581. For what causes.  
4582. No joinder or counterclaim.  
4583. When and by whom commenced.  
4584. By private person.  
4585. Petition to contain what.  
4586. Liability for costs.  
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4597. Bond of trustees.

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4599. Duties of trustees.  
4600. Books delivered to.  
4601. Inventory.  
4602. Powers of trustees.  
4603. Penalty for refusing to obey order of court.

§ 4581. A civil action by ordinary proceedings may be brought in the name of the State as plaintiff in the following cases:

1. Against any person unlawfully holding or exercising any public office or franchise within this State, or any office in any corporation created by this State;

3. Against any person acting as a corporation within this State without being authorized by law;

4. Or against any corporation doing or omitting acts, which amount to a forfeiture of their rights and privileges as a corporation, or exercising powers not conferred by law; \* \* \*

Causes of forfeiture. §§ 1624, 1629; Act of 1890, p. 21, post. Irregular organization no defense. § 1639.

[An action may be brought upon the relation of the auditor to close the business of an insurance company for failure to comply with statutory provisions as to method of conducting business, and for the purpose of such action it will be assumed that the corporation was duly organized. *State v. Aid Assn.*, 59 Iowa, 125; s. c., 12 N. W. Rep. 782.]

§ 4582. To such action there shall be no joinder of any other cause of action, nor any counterclaim.

§ 4583. Such action may be commenced by the district (county) attorney at his discretion, and must be so commenced when directed by the governor, the general assembly, or a court of record.

§ 4584. If the district (county) attorney, on demand, neglect or refuse to commence the same, any citizen of the State having an interest in the question, may apply to the court in which the action is to be commenced, or to the judge thereof, for leave to do so, and, upon obtaining such leave, may prosecute the action to final judgment in other respects as provided.

§ 4585. The petition shall contain plain statement of the facts which constitute the grounds of the proceeding, and, with the notice, and all the subsequent pleadings and proceedings, shall conform to the rule given for procedure in civil actions in title seventeen of this Code, except so far as the same are modified by this chapter.

§ 4586. When such action is brought upon the relation of a private individual, that fact shall be stated in the petition, and the order allowing him to prosecute may require that he shall be responsible for costs in case they are not adjudged against the defendant. In other cases the payment of costs shall be regulated by the same rule as in criminal actions.

§ 4592. \* \* \* If a corporation be found to have violated the law by which it holds its existence, or in any manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted and altogether excluded from such \* \* \* franchise, or privilege, and also that he pay the costs of the proceeding.

§ 4594. In case judgment is rendered against a pretended but not real corporation, the cost may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

§ 4595. When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby.

§ 4596. If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders.

§ 4597. Said trustees shall enter into a bond in such a penalty and with such security as the court approves, conditioned for the faithful discharge of their trusts.

§ 4598. Suit may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties.

§ 4599. The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled.

§ 4600. The court shall, upon application for that purpose, order any officer of such corporation or any other person having possession of any of the effects, books, or papers of the corporation, in anywise necessary, for the settlement of its affairs, to deliver up the same to the trustees.

§ 4601. As soon as practicable after their appointment, the trustees shall make and file in the office of the clerk of the court, an inventory of all the effects, rights, and credits which come to their possession or knowledge, the truth of which inventory shall be sworn to.

§ 4602. They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders respectively, to the extent of the effects which come into their hands.

§ 4603. Any person who, without good reason, refuses to obey any order of the court, as herein provided, shall be deemed guilty of contempt of court, and shall be fined in any sum not exceeding five thousand dollars and imprisoned in the county jail until he comply with said order, and shall be farther liable for the damages resulting to any person on account of his refusal to obey such order.

## CHAPTER IX.

### Injunctions.

Sec. 4627. Reasonable notice to be given.

§ 4627. An injunction to stop the general and ordinary business of a corporation, or the operations of a railway \* \* \* can only be granted upon reasonable notice of the time and place of the application to the party to be enjoined.

[Section applied. District Tp. v. Barrett, 47 Iowa, 110.]

## Part Fourth. Code of Criminal Procedure.

### TITLE XXIV. OF CRIMES AND PUNISHMENTS.

## CHAPTER XI.

### Offenses Against Public Policy.

Sec. 5429. Blacklisting employes.

5430. Same by agents.

§ 5429. If any person, agent, company or corporation, after having discharged any employe from his or its service shall prevent or attempt to prevent by word or writing of any kind such discharged employe from obtaining employment with any other person, company or corporation, except by furnishing in writing on request a truthful statement as to the cause of his discharge, such person, agent or corporation, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and such person, agent, company or corporation shall be liable in penal damages to such discharged person to be recovered by civil action; but this section shall not be construed as prohibiting any person or agent of any company or corporation from informing in writing any other person, company or corporation setting forth a truthful statement of the reasons for such discharge.

See Act 2, at p. 22.

§ 5430. If any railway company, any other company or partnership or corporation in this State shall authorize or allow any of its or their agents to blacklist any discharged employes or attempt by word or writing or any other means whatever to prevent such discharged employe or any employe who may have voluntarily left said company's service from obtaining employment with any other person or company, except as provided for in section one hereof (section 5429), such person or copartnership shall be liable in treble damages to such employe so prevented from obtaining employment, to be recovered by him by a civil action.

See Act 2, at p. 22.

Indictment; trusts — Stat., §§ 5711, 5712; Act, May 6, 1890.

## TITLE XXV. OF CRIMINAL PROCEDURE.

- Ch. 17. Of process upon an indictment.  
18. Of arraignment of defendant.

### CHAPTER XVII.

#### Of Process upon an Indictment.

Sec. 5711. Process against a corporation.

§ 5711. The process upon an indictment against a corporation shall be a notice; which shall be issued by the clerk at any time after the filing of the indictment in his office, on the application of the district (county) attorney. The notice shall be under the seal of the court, and shall, substantially, notify the defendant of the finding of the indictment, of the nature of the offense charged, and that he must forthwith appear and answer the same. It may be served by any peace officer in any county in the State on any officer or agent of the defendant, by reading the same to him and leaving with him a copy thereof. It shall be returned to the clerk's office without delay, with proper

evidence of its service; and, from and after two days from the time of the making of such service, the defendant shall be considered in court, and thereafter shall be considered to be present to all proceedings had on the indictment.

[Corporations are to be construed as persons when the circumstances in which they are placed are identical with those of natural persons expressly included in a statute. Therefore, a corporation was held liable for penalty provided for illegal sale of liquor. *Stewart v. Waterloo*, 71 Iowa, 226; s. c., 32 N. W. Rep. 275. And it appears to be well settled that a corporation may be indicted and punished for a public nuisance, such as obstruction of a highway, navigable streams, etc. *Id.*]

### CHAPTER XVIII.

#### Of Arraignment of the Defendant.

Sec. 5712. Corporation not arraigned.

§ 5712. \* \* \* Where a corporation is defendant, arraignment shall not be required.

## LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1888.

1. For the punishment of pools, trusts, combinations and conspiracies.
2. To protect employees and laborers in their claims for wages.
3. To legalize acknowledgments of deeds and conveyances of land.

### Act 1.

AN ACT for the punishment of pools, trusts, combinations and conspiracies, and as to evidence in such cases.

Be it enacted by the general assembly of the State of Iowa:

Section 1. If any corporation organized under the laws of this or any other state or country, for transacting or conducting any kind of business in this State, or any partnership, or individual or other association of persons whosoever, shall create, enter into, or become a member of, or a party to, any trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any person or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or party to any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, shall be deemed and adjudged guilty of a conspiracy to defraud, and be

subject to indictment and punishment as provided in this act.

§ 2. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employes, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

§ 3. If a corporation or company, firm or association, shall be found guilty of a violation of this act, it shall be punished by a fine of not less than one per cent. of the capital stock of such corporation or amount invested in such company, firm or association, and not to exceed twenty per cent. of such capital stock or amount invested. Any president, manager, director or other officer or agent or receiver of any corporation, company, firm or association, or any member of any company, firm or association, or any individual, found guilty of a violation of the first section of this act, shall be punished

## Trusts; liens for wages — Act, May 5, 1890.

by a fine of not less than five hundred dollars, nor to exceed five thousand dollars, and in addition thereto may be imprisoned in the county jail not to exceed one year.

§ 4. Any contract or agreement in violation of any provisions of the preceding sections of this act shall be absolutely void.

§ 5. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provisions of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment.

§ 6. Any corporation created or organized by or under the law of this State which shall violate any provision of the preceding sections of this act shall thereby forfeit its corporate right and franchises, and for its corporate existence shall thereupon cease and determine as provided in this section and it shall be the duty of the secretary of State, after the passage of this act, to address to the president, secretary or treasurer of each incorporated company doing business in this State, a letter of inquiry as to whether the said corporation has merged all or any part of its business or interest in or with any trust, combination or association of persons or stockholders as named in the preceding provisions of this act, and to require an answer, under oath, of the president, secretary, treasurer or any director of said company; a form of affidavit prescribed by the secretary of State shall be enclosed in said letters of inquiry, and on refusal to make oath in answer to said inquiry, the secretary of State shall immediately cause a certified statement of the facts to be filed in the office of the attorney-general of the State who shall proceed, or direct such proceedings by any county attorney in the State, to commence an action in the district court of any county in the State of competent jurisdiction, when said proceedings are instituted they shall be conducted as ordinary law actions triable by court or jury. On the final decisions of the same should the defendant be found guilty of a violation of any of the provisions of this act, said court shall render a judgment and order a revocation of the charter of said company as a penalty for the violation, or violation for which the said company shall be found guilty, and the secretary of State shall make publication of such revocation in four newspapers in general circulation in the four largest cities of the State.

§ 7. It shall be the duty of the secretary of State upon satisfactory evidence (evidence) that any company or association of persons duly incorporated and operating under the laws of this State have entered into any trust, combination or association as provided in the preceding provisions of this act, to give notice to such corporation that unless they withdraw from and sever all

business connection with said trust, combination or association, their charter will be revoked at the expiration of thirty days from date of such notice.

§ 8. It shall be the duty of the prosecuting attorneys in their respective jurisdictions, and the attorney-general, to enforce the foregoing provisions of this act, and any prosecuting attorney, or the attorney-general, securing a conviction under the provisions of this act, shall be entitled, in addition to such fee or salary as by law he is allowed for such prosecution, to one-fifth of the fine recovered. When the attorney-general and prosecuting attorney act in conjunction in the prosecution of any case, under the provisions of this act, they shall be entitled to one-fourth of the fine recovered which they shall divide equally between them, where there is no agreement to the contrary, and it shall be the duty of the grand jury to inquire into and ascertain if there exists any pools, trusts, combinations within their respective counties.

§ 9. Chapter 84, acts of the twenty-second general assembly and all acts or parts of acts in conflict with the provisions of this act, are hereby repealed.

§ 10. Whereas, great injustice is being done to the people of this State by the formation of trusts and trust companies, therefore an emergency exists, and this act shall take effect and be in force from and after its passage and publication, as required by law, in the Iowa State Register and Des Moines Leader, newspapers published in Des Moines, Iowa.

(Approved May 6, 1890.)

Process upon indictment. § 5711.

### Act 2.

AN ACT to protect employes and laborers in their claims for wages.

Be it enacted by the general assembly of the State of Iowa:

Section 1. That hereafter, when the property of any company, corporation, firm or person shall be seized upon by any process of any court of this State; or when their business shall be suspended by the action of creditors or be put into the hands of a receiver or trustee, then in all such cases, the debts owing to laborers or servants, which have accrued by reason of their labor or employment to an amount not exceeding one hundred dollars to each employe for work or labor performed within ninety days next preceding the seizure or transfer of such property, shall be considered and treated as preferred debts and such laborers or employes shall be preferred creditors, and shall first be paid in full; and if there be not sufficient to pay them in full, then the same shall be paid to them pro rata after paying

## Legalizing acknowledgments — Act, March 22, 1898.

costs. Any such laborer or servant desiring to enforce his or her claim for wages under this act shall present a statement under oath showing the amount due after allowing all just credits and set-offs, the kind of work for which such wages are due, and when performed, to the officer, person or court charged with such property within ten days after the seizure thereof on any execution or writ of attachment, or within thirty days after the same may have been placed in the hands of any receiver or trustee; and thereupon it shall be the duty of the person or court receiving such statement to pay the amount of such claim or claims to the person or persons entitled thereto (after first paying all costs occasioned by the seizure of such property) out of the proceeds of the sale of the property seized; Provided, That any person interested may contest any such claim or claims or any part thereof by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property and thereupon the claimant shall be required to reduce his claims to judgment before some court having jurisdiction thereof, before any part thereof shall be paid.

(Approved May 5, 1899.)

## Act 3.

AN ACT to legalize acknowledgments of deeds and conveyances of land.

Be it enacted by the general assembly of the State of Iowa:

Section 1. That all deeds and conveyances of lands within this State heretofore executed but which have been acknowledged or proved according to and in compliance with the laws of this state before a notary public or other official authorized by law to take acknowledgments who was, at the time of such acknowledgment, an officer or stockholder of a corporation interested in any such deed or conveyance, or otherwise interested therein, are, if otherwise valid, hereby declared effectual and valid in law to all intents and purposes as though acknowledged or proved before an officer not interested therein; and if heretofore recorded in the respective counties in which such lands may be, the records thereof are hereby confirmed and declared effectual and valid in law to all intents and purposes as though said deeds and conveyances, so acknowledged or proved and recorded, had (prior to being recorded) been acknowledged or proved before an officer having no interest therein.

(Approved March 22, 1898.)



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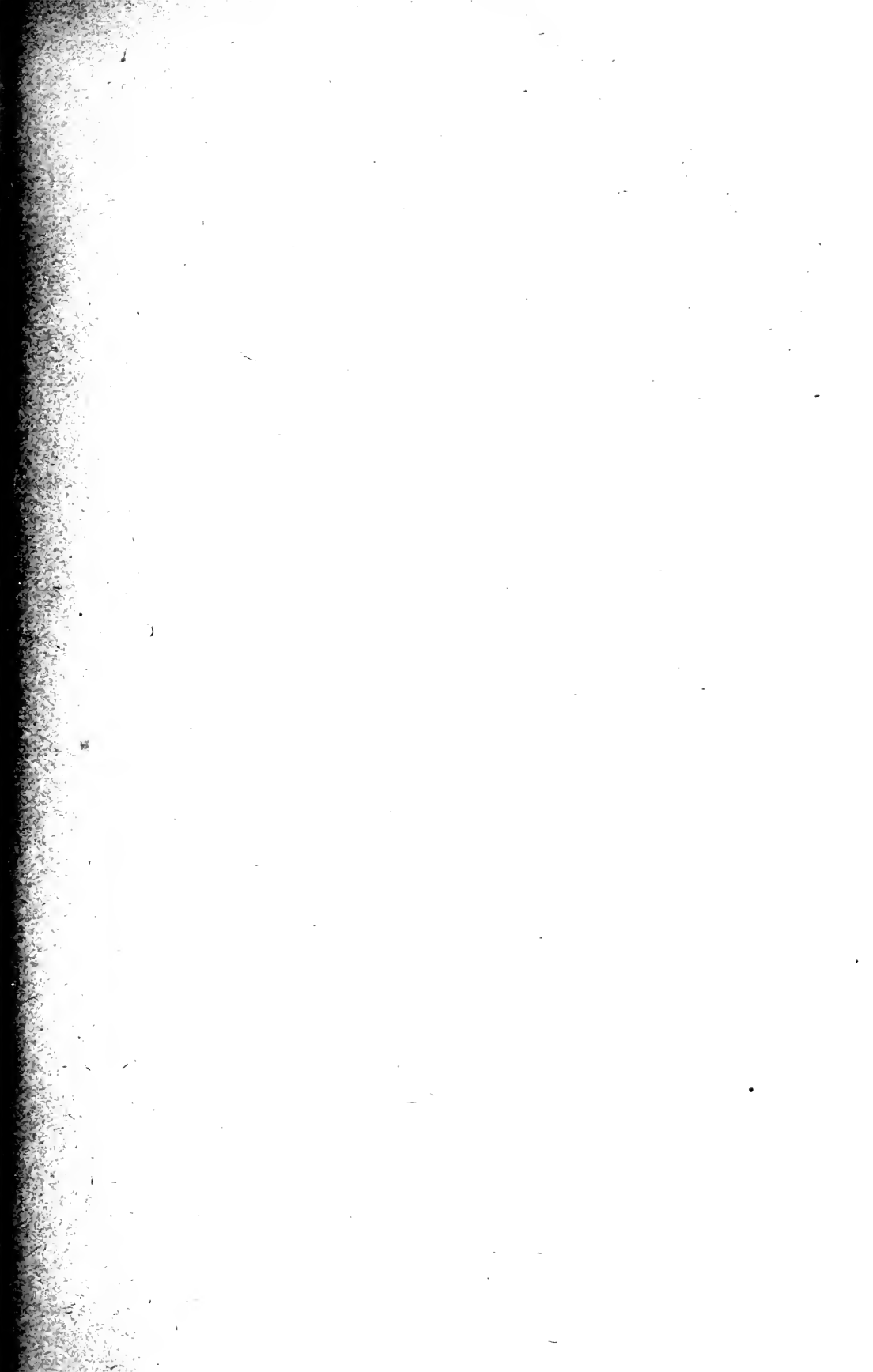


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# KANSAS.

## CONSTITUTION OF KANSAS--1859.

### PROVISIONS RELATING TO CORPORATIONS.

#### Bill of Rights.

**Sec. 2.** No special privileges to be granted. This power not to be exercised by any tribunal or agency.

#### ARTICLE II.

##### Legislative.

**Sec. 17.** General laws; to be uniform in operation

#### ARTICLE XII.

##### Corporations.

- Sec. 1.** No special acts to be passed conferring corporate powers—general laws—subject to amendment by repeal.
2. Individual liability of stockholders.
4. Right of way—payment, how made or secured.
6. Term "corporation" defined—may sue and be sued.

#### Bill of Rights.

§ 2. \* \* \* No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.

Corporations not to be created by special act.  
Art. XII, § 1.

[Above section does not inhibit legislature from granting to municipal corporations the power to permit railroad companies to construct and operate street railway therein. *Atchinson v. Ry.*, 31 Kan. 669; s. c., Pac. Rep. 284.]

An act of the legislature authorizing counties and cities to subscribe for stock in, and issue bonds to railroad companies was held constitutional and valid. *State ex rel. v. Nemaha Co.*, 7 Kan. 542.]

#### ARTICLE II.

##### Legislative.

§ 17. \* \* \* In all cases where a general law can be made applicable, no special law shall be enacted.

See art. XII, § 1.

[The fact that all persons and corporations brought within the purview of certain legislation are subject to the same duties and liabilities, under similar circumstances, disposes of the con-

stitutional objection. *Ry. Co. v. Merrill*, 40 Kan. 409; s. c., 19 Pac. Rep. 793.]

An act requiring railroad companies to take bond to protect labor is not unconstitutional. *Mann v. Corrigan*, 28 Kan. 194.]

Power of legislature to pass general curative laws for corporations, discussed. *Gilmore v. Norton*, 10 Kan. 365.]

#### ARTICLE XII.

##### Corporations.

Section 1. The legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws; but all such laws may be amended or repealed.

See Bill of Rights, § 2; art. II, § 17. General laws. §§ 1155 et seq.

[It cannot be shown for the purpose of avoiding an act of the legislature, that the act was passed for insufficient or improper reasons. *City v. Burleigh*, 36 Kan. 34; s. c., 32 Pac. Rep. 332.]

Where a general law cannot be made applicable, the legislature may pass a special act, and this although the special act may, to some extent, affect the uniform operation throughout the State of other laws; and generally, it is a question for the legislature to determine whether a general law can be made applicable or not. *Id.*

Special grants are not to be extended by construction beyond the plain terms in which they are conferred, but should be construed strictly against the corporation, and in favor of the public. *City v. Corrigan*, 35 Kan. 21; s. c., 10 Pac. Rep. 69.]

Rights or powers which have been obtained under old territorial charters are subject to amendment or repeal. *State v. Ry. Co.*, 33 Kan. 189; s. c., 5 Pac. Rep. 772.]

A legislative act, general in form but special in fact, is void. *Ritchie v. Mulvane*, 39 Kan. 241; s. c., 17 Pac. Rep. 839.]

And where it is so special that, though general in form, it can possibly apply to only three certain corporations, it is unconstitutional. *Topeka v. Gillett*, 32 Kan. 431; s. c., 4 Pac. Rep. 800. Article XII of the Constitution construed. *Gray v. Crockett*, 30 Kan. 138; s. c., 1 Pac. Rep. 59; *Atchison v. Bartholow*, 4 Kan. 124.]

An act of the territorial legislature, granting a franchise, is a contract between the legislature and the grantee, which the legislature can neither change, repeal or impair the obligation of. *Territory v. Reyburn*, McC. 124.]

§ 2. Dues from corporation shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by each stockholder; and such other means as shall be provided by

law; but such individual liabilities shall not apply to railroad corporations, nor corporations for religious or charitable purposes.

Such liability, how enforced. §§ 1192, 1204. Limit of liability. § 1206. Contribution. § 1205.

[The law in effect prohibits a bank from purchasing its own stock. *Bank v. Wulfekuhler*, 19 Kan. 65. Not only is the bank, with all its property, liable for its debts, but each stockholder is also liable for such debts to the amount of his stock. *Id.*

Where no notice is given to the stockholder of the pendency of an action against the corporation, his liability is secondary to the corporation, and exists alone by reason of this statutory provision, and of that provision of the Constitution in pursuance of which the statute is enacted. *Howell v. Mangelsdorf*, 33 Kan. 196; s. c., 5 Pac. Rep. 559.

Where a railroad company, operating a long line in the State, controls and manages another railroad for the purpose of a local line, it will be held liable for the negligence of the men operating the same. *Ry. Co. v. Davis*, 34 Kan. 199; s. c., 8 Pac. Rep. 116.

The above provision contemplates legislative action as to the means of enforcing such liability. *Tuttle v. Nat. Bank, etc. (Ill.)*, 44 N. E. Rep. 984.]

§ 4. No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation.

[The damages recoverable under above section can never be less than the actual value of the property taken. In the statutes relating to condemnation proceedings, the word "owner" may be construed to apply to every person having any interest in the property. *Smith v. Labore*, 37 Kan. 486; s. c., 15 Pac. Rep. 577.

Railroads are not included within the intent of the act of congress of July 26, 1866, which declares that "the right of way for the construction of highways over public lands not reserved for public uses is hereby granted." *Ry. Co. v. Johnson*, 38 Kan. 442; s. c., 16 Pac. Rep. 125.

Where a railroad company enters upon land and constructs its road, without the consent of the landowner and without making compensation for such land, the owner may pursue any of the appropriate remedies. *Ry. Co. v. Feckheimer*, 36 Kan. 45; s. c., 12 Pac. Rep. 362.

And where the railroad is being operated through such land, the owner may regard the company's act as a taking of the property under right of eminent domain, and may bring an action for the damages he has sustained by the appropriation. *Cohen v. Ry. Co.*, 34 Kan. 158; s. c., 8 Pac. Rep. 138.

The power of eminent domain is not granted to the legislature by the Constitution; it is inherent to sovereignty, and the law-making body has the fullest liberty in the exercise of its power except as restricted by the Constitution. *Ry. Co. v. Ry. Co.*, 28 Kan. 453.

The compensation for right of way appropriated to the use of corporations includes not only the value of the property taken, but also the loss the landowner sustains in the value of his property by being deprived of a portion of it. *Reisner v. Atchison*, 27 Kan. 382.

Above article of the Constitution applies to canals, railroads and other similar cases in which some corporation takes a use or benefit in the proposed way, other than that enjoyed by the public. *Pottawotomic v. O'Sullivan*, 17 Kan. 58. It is not a grant of power to appropriate private property to public use, but a restriction upon the exercise of such power. *Id.*

The term "right of way" is not used as defining the quantity of estate to be appropriated, but as meaning the right of passage irrespective of the estate or title to be acquired. *Challiss v. Ry. Co.*, 16 Kan. 117.

The rule that a compensation must be first made in money, or secured by a deposit of money, before any right of way can be appropriated to the use of the corporation is imperative, and is not relaxed by the fact that the landowner has appealed from the assessment of damages by the commissioner, nor by the fact that he has recovered a judgment for the amount thereof on such appeal. *Ry. Co. v. Callender*, 13 Kan. 496.

The right of way does not pass until the compensation is secured. *Blackshire v. Ry. Co.*, 13 Kan. 514.

No man can be deprived of any right, title or interest in his lands, except as expressly provided by the provisions of the Constitution and statutory law; and he cannot be divested through such power of any greater interest in his land than the Constitution or statutes expressly provide for. *Shawnee v. Beckwith*, 10 Kan. 603.

An owner whose land has not been condemned may sue the railroad company for trespass. *Ry. Co. v. Weaver*, 10 Kan. 344.

The statutes of Kansas authorizing real estate to be appropriated to the use of a railroad company for right of way, so far as they apply to this case, do not contravene the provisions of the above section of the Constitution. *Hunt v. Smith*, 9 Kan. 137.

On a trial of an appeal from the assessment of the value of land taken by a railroad company, evidence showing value of the land immediately before and after the location of the road is properly admitted, but evidence of benefit to the land should be excluded. *Ry. Co. v. Owen*, 8 Kan. 469.

The railroad company must pay for the right of way, irrespective of any benefit from the proposed improvement of the company. *Ry. Co. v. Orr*, 8 Kan. 419.

Could even special benefits received by the plaintiff, by reason of the construction of said railroad track, be set off against the plaintiff's damages? *Ry. Co. v. Andrews*, 30 Kan. 597; s. c., 2 Pac. Rep. 667.

Under the provisions of above section, a railroad company must make full compensation for the right of way appropriated to the corporation, irrespective of any benefits or any improvements to the property from the construction of the road. *Ry. Co. v. Ross*, 40 Kan. 598; s. c., 20 Pac. Rep. 197.

Where a railroad grade has been constructed and is afterward abandoned, it becomes the property of the owner of the land through which it was constructed, and if another railroad appropriates the same it should pay to the owner the value of the land as enhanced by such grade. *Cohen v. Ry. Co.*, 34 Kan. 158; s. c., 8 Pac. Rep. 138.

If a railroad company takes possession of a strip of land, with consent of a person in possession of it, claiming title thereto, and who has color of title, in an action by the paramount owner for such taking, the railroad company will not be considered a mere trespasser, but will be required to pay only the value of the land at the time it was taken, and the damages to the land not taken. *Id.*

§ 6. The term corporations, as used in this article, shall include all associations and joint-stock companies having powers and privileges not possessed by individuals or partnerships; and all corporations may sue and be sued in their corporate name.

Corporations defined. §§ 1152-1154. "Person" includes. § 2588. May sue and be sued. § 1167.

["Corporation" defined. *Leavenworth v. Casey*, McC. 124.]

## THE GENERAL STATUTES OF KANSAS—1889.

## CHAPTER XXII.

## Conveyances.

Sec. 1113. Private corporations may convey real estate; effect of deed.

§ 1113. All deeds, contracts, and conveyances executed and acknowledged by private corporations, under and pursuant to section four of chapter twenty-two of the general statutes of eighteen hundred and sixty-eight, be and the same are hereby ratified and confirmed; and all instruments of writing, executed and acknowledged under and pursuant to said section, now copied into the proper books of the office of the register of deeds of the several counties of this State, shall, upon the passage of this act, be deemed to impart to subsequent purchasers and incumbrancers, and all other persons, notice of all deeds, mortgages, powers of attorney, conveyances, contracts, and other instruments of writing, so far as, and to the extent that the same may be found recorded, copied, or noted in such books of records, notwithstanding any defect in the execution, acknowledgment, recording, or certificate of recording the same; and the record of such instrument, or a duly authenticated copy thereof, shall be competent evidence whenever it shall be made to appear by the party's own oath or otherwise, the original is shown to be lost, or not in the possession or under the control of the party wishing to use the same: Provided, That nothing herein contained shall be construed to affect any rights heretofore acquired by subsequent grantees, assignees, or incumbrancers.

Power to convey realty. § 1167, subd. 4; § 1198

## CHAPTER XXIII.

## Corporations.

- Art. 1. Preliminary provisions.  
2. Creation of corporations.  
3. Powers and duties of corporations.  
4. Miscellaneous provisions.  
5. Dissolution of corporations.

## ARTICLE 1. PRELIMINARY PROVISIONS.

- Sec. 1152. Kinds of corporations.  
1153. Public corporation, what.  
1154. Kinds of private corporations.

§ 1152. Corporations are either: First, public; or, second, private.

See Const., art. XII, § 6.

§ 1153. A public corporation is one that has for its object the government of a portion of the State.

§ 1154. Private corporations are of three kinds: First, Corporations for religion. Second, Corporations for charity or benevolence; and, Third, Corporations for profit.

"Person" includes. § 2588.

## ARTICLE II. CREATION OF CORPORATIONS.

- Sec. 1155. Private corporations, how created.  
1156. Purposes for which they may be formed.  
1157. The same.  
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1160. Powers.  
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1162. Name.  
1163. What charter of road company must state.  
1164. Must be subscribed and acknowledged.  
1165. Must be filed and recorded; certified copy shall be evidence.  
1166. Corporation shall exist from what time.

§ 1155. Private corporations may be created by the voluntary association of five or more persons for the purposes and in the manner mentioned in the following sections of this article and amendments thereto. Every member or stockholder in said corporation shall vote in person or by proxy.

Must be created by general laws. Const., art. XII, § 1; art. 11, § 17. Bill of rights. § 2. "Corporation" defined. Const., art. XII, § 6; G. S. §§ 1152–1154. Dissolution. §§ 1200 et seq. Forfeiture. §§ 4766 et seq. Method of voting. § 1185.

[A stockholder will not be relieved from liability on his subscription to stock by reason of irregularities in the election of officers or in the adoption of by-laws, nor by the fact that a corporation created to "build and maintain a flouring mill" is expending its money to build a dam. *Glinrich v. Mill Co.*, 21 Kan. 61.]

One who has frequently dealt with a supposed corporation, which has attempted in good faith to incorporate, and there has been an actual, open and notorious exercise of corporate powers for a series of years, unchallenged by the State, will not be permitted, when sued upon a note purchased and held by such corporation, and which as a corporation it might rightfully purchase and hold, to defeat the action by showing a technical omission in the proceedings for organization. The corporation is as to him one de facto; and whether it be one also de jure is a question not open for inquiry collaterally, but only by a direct proceeding instituted by the State. *Pape v. Bank*, 20 Kan. 440; see *Douglas Co. v. Bolles*, 94 U. S. 161.

A corporation for jurisdictional purposes is to be treated as a citizen of the State by whose laws it was created, even though it has no business

office in, and none of its officers are in such State. *Pac. R. R. Co. v. M. P. Ry. Co.*, 5 McC. 373.

A corporation created by a territorial legislature becomes, after the admission of the territory as a State, a corporation of the State. *K. P. Ry. Co. v. Atchison, etc., R. R. Co.*, 112 U. S. 414; *s. c.*, 5 Sup. Ct. Rep. 314.

An association of persons cannot have even a de facto corporate existence under the general law, without a bona fide intent to comply with such law. *McLennan v. Hopkins*, 41 Pac. Rep. 1061.]

§ 1156. The purposes for which private corporations may be formed are: First. The support of public worship. Second. The support of any benevolent, charitable, educational or missionary undertaking. Third. The support of any literary or scientific undertaking, the maintenance of a library, or the promoting of painting, music, or other fine arts. Fourth. The encouragement of agriculture and horticulture. Fifth. The maintenance of public parks, and of facilities for skating, and other innocent sports. Sixth. The maintenance of a club for social enjoyment. Seventh. The maintenance of a public or private cemetery. Eighth. The prevention or punishment of theft or wilful injuries to property, and insurance against such risks. Ninth. The insurance of human life, and dealing in annuities. Tenth. The insurance of human beings against sickness or personal injury. Eleventh. The insurance of the lives of domestic animals, or against their loss by other means. Twelfth. The insurance of property, marine risks. Thirteenth. The insurance of property against loss or injury by fire, or by any risk of inland transportation. Fourteenth. The purchase, location and laying out of town sites, and the sale and conveyance of the same in lots and subdivisions, or otherwise. Fifteenth. The construction and maintenance of a railway and a telegraph line in connection therewith. Sixteenth. The construction and maintenance of any species of road and of bridges in connection therewith. Seventeenth. The construction and maintenance of a bridge. Eighteenth. The construction and maintenance of a telegraph line. Nineteenth. The establishment and maintenance of a line of stages. Twentieth. The establishment and maintenance of a ferry. Twenty-first. The building and navigation of steamboats and carriage of persons and property thereon. Twenty-second. The supply of water to the public. Twenty-third. The manufacture and supply of gas or the supply of light or heat to the public by any other means. Twenty-fourth. The transaction of any manufacturing, mining, mechanical or chemical business. Twenty-fifth. The transaction of a printing and publishing business. Twenty-sixth. The establishment and maintenance of a hotel. Twenty-seventh. The erection of buildings and the accommodations and loan of funds for the purchase of real property. Twenty-eighth. The improvement of the breed of domestic animals by importation, sale or otherwise. Twenty-ninth. The trans-

portation of goods, wares, merchandise, or any valuable thing. Thirtieth. The promotion of immigration. Thirty-first. The construction and maintenance of sewers. Thirty-second. The construction and maintenance of a street railway. Thirty-third. The erection and maintenance of market-houses and market places. Thirty-fourth. The construction and maintenance of dams and canals for the purpose of water-works, irrigation or manufacturing purposes. Thirty-fifth. The construction, maintenance and operation of union stockyards, and the erection of such buildings, hotels, railways and switches as may be necessary for that purpose. Thirty-sixth. The conversion and disposal of agricultural products by means of mills, elevators, markets and stores, or otherwise. Thirty-seventh. The organization and maintenance of boards of trade and business exchanges, with powers to hold and improve real estate, and to transact any and all business connected therewith. Thirty-eighth. The organization of loan and trust companies: Provided, That nothing in this act shall be construed to authorize such loan and trust companies to sell real estate held as security, except in the manner provided by law. Thirty-ninth. The accumulation and loan of funds, the erection of buildings, and the purchase and sale of real estate for the benefit of its members. Fortieth. To raise necessary funds by any settlers on any Indian lands in this State, to defray expenses in endeavoring to obtain title to any such lands so occupied by such settlers.

See §§ 1157-1159.

[Under subdivision 36, a corporation may be created "to build and maintain a flouring mill." *Girlich v. Mill Co.*, 21 Kan. 61.]

§ 1157. In addition to the purposes for which private corporations may be formed, as provided in chapter seventy (preceding section), laws of eighteen hundred and seventy-three, are the following: The transaction of any manufacturing, mining, mechanical, chemical, or mercantile and agricultural implements and produce business, either separately or all combined.

See §§ 1156, 1158, 1159.

§ 1158. Private corporation may be formed for the purpose of selling, hiring or leasing engines, cars, rolling stock and other equipments for railroads to railroad companies, in addition to the purposes for which corporations may be formed as provided in chapter seventy (§ 1156) of the laws of eighteen hundred and seventy-three, and of the acts supplementary thereto.

§ 1159. Corporations for the construction and maintenance of a telephone line may be formed in the mode and manner prescribed by the general laws of this State for the creation of private corporations.

## Charters — Stat., §§ 1160-1166.

§ 1160. All such corporations shall have all the rights and powers conferred, and be subject to all the liabilities and duties imposed by the general laws of this State upon telegraph corporations.

§ 1161. A charter must be prepared setting forth: First, The name of the corporation. Second, The purposes for which it is formed. Third, The place or places where its business is to be transacted. Fourth, The term for which it is to exist. Fifth, The number of its directors or trustees, and the names and residences of those who are appointed for the first year; and, Sixth, The amount of its capital stock, if any, and the number of its shares into which it is divided.

See § 1163. General office must be within the State. §§ 1190, 1191. General corporate power. § 1167.

[Where corporators in preparing certificate employ only the words used in the statute to describe the general purposes of such incorporation, it will be presumed that they intended to create a corporation of the same general nature and powers granted by the statute, rather than that by such words they sought to apply special limitations on the powers of the corporation. *Whetstone v. University*, 13 Kan. 320.

It is not a pre-requisite to the transaction of business by a corporation that all the capital stock be subscribed. Corporate existence dates from time of filing charter. *R. R. Co. v. Stafford Co.*, 36 Kan. 121; s. c., 12 Pac. Rep. 593.

The placing of a void provision in the by-laws of a corporation does not necessarily invalidate the organization. *Aultman v. Waddle*, 40 Kan. 201; s. c., 10 Pac. Rep. 739.]

§ 1162. That the corporate name of every corporation hereafter organized, (except banks and corporations not for pecuniary profit,) shall commence with the word "the" and end with the word "corporation," "company," "association," or "society," and shall indicate by its corporate name the business to be carried on by said corporation; and any corporation organized or existing under the provisions of this act may within the limits of this act amend its charter in any of the parts thereof; but in any such case such charter shall be so amended only when authorized by a two-thirds vote of the stockholders of such corporation at a meeting held in conformity with the by-laws thereof; and as so amended such charter shall be subscribed by the directors or trustees thereof, and acknowledged by not less than three thereof, who shall be citizens of this State, before an officer duly authorized to take acknowledgments of deeds, and thereupon filed and recorded in the same manner and with like effect as now provided in cases of original charters under provisions of this act.

Name, how changed. §§ 1169, 1170. Misnomer not fatal. § 1197.

§ 1163. The charter of a road company must also state: First, The kind of road in-

tended to be constructed. Second, The places from and to which the road is intended to be run. Third, The counties through which it is intended to be run; and, Fourth, The estimated length of the road. Fifth, The charter of a bridge or ferry company shall also state the stream intended to be crossed, and the place where it is intended to be crossed by the bridge or ferry.

See § 1161.

[Above section does not apply to a street railway company, incorporated for the purpose of constructing and operating a horse-car railway in the streets of a single city. *Atchison, etc., Co. v. Ry. Co.*, 31 Kan. 660; s. c., 3 Pac. Rep. 284.

In the certificate of incorporation of a bridge company, what is a sufficient description of location of the bridge. *Hunt v. Bridge Co.*, 11 Kan. 412.]

§ 1164. The charter of an intended corporation must be subscribed by five or more persons, three of whom, at least, must be citizens of this State, and must be acknowledged by them before an officer duly authorized to take acknowledgments of deeds.

[See *Sword v. Wickersham*, 29 Kan. 746.]

§ 1165. Such charter shall thereupon be filed in the office of the secretary of State, who shall record the same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the charter, or of the record thereof duly certified by the secretary of State, under the great seal of the State, shall be evidence of the creation of the corporation.

See §§ 1166, 1201.

[Above section applied. *Mining Co. v. Adams*, 35 Kan. 193; s. c., 10 Pac. Rep. 468.]

§ 1166. The existence of the corporation shall date from the time of filing the charter, and the certificate of the secretary of State shall be evidence of the time of such filing.

Denial of corporate existence. § 434. Proof of. § 5279.

[A corporation is created when certificate is filed with secretary of State. *Hunt v. Bridge Co.*, 11 Kan. 412; *R. R. Co. v. Stafford Co.*, 36 Kan. 121; s. c., 12 Pac. Rep. 593.

While corporate existence dates from time of filing charter, it cannot be regarded as a complete organization authorized to transact business when subscription books have not yet been opened, and no stock has been subscribed; nor can it be until a full and complete organization has been effected in accordance with the requirements of the statutes. *Coal Co. v. Settle*, 54 Kan. 424; s. c., 38 Pac. Rep. 483; *Walton v. Oliver*, 49 Kan. 107; s. c., 30 Pac. Rep. 172.]

## ARTICLE III. POWERS AND DUTIES OF CORPORATIONS.

Sec. 1167. Powers of corporations.

1168. Rights saved.

1169. Corporate name or number of directors, how changed.

1170. Notice of change, how given.

- Sec. 1171. Corporation may increase its stock; increase shall be certified to secretary of State.
1172. May borrow money.
1173. Subscription-books shall be opened, when.
1174. Majority shall constitute a quorum; annual election shall be held.
1175. Officers to be chosen, how; directors to take oath.
1176. By-laws may be adopted.
1177. Number of directors may be increased.
1178. Failure to hold election on day appointed; shall not be deemed a dissolution.
1179. Control of secular affairs in trustees, and title of property shall vest in them.
1180. Powers and duties of directors.
1181. Statement of condition of corporation to be made, when; what it shall state; penalty for neglect.
1182. Corporation heretofore organized may accept the provisions of this act.
1183. Corporation shall employ its stock only for legitimate purposes of its organization.
1184. Stock shall be deemed personal estate; who may vote on stock.
1185. The manner of voting.
1186. Subscriptions shall be paid as by-laws require.
1187. Penalty for non-payment.
1188. Debts due from members may be sued for.
1189. Directors liable individually, when.
1190. General office of corporation to be kept within the State.
1191. Penalty for failure or refusal to comply with preceding section.

§ 1167. Every corporation, as such, has power:

First. To have succession by its corporate name, for the period limited in its charter, and when no period is limited, for twenty years.

Corporate name. § 1162. Must be stated in certificate. § 1161. Change of. §§ 1169, 1170. Duration extended. § 1182. Charter extended. § 1194. Dissolution. § 1200.

Second. To maintain and defend judicial proceedings.

Corporation may sue and be sued. Const., art. XII, § 6. May sue its members. § 1188. Stockholders liable, when. §§ 1192, 1204. Venue of actions against corporations. §§ 4128-4132. Service of summons upon. §§ 4147-4156. Same, in justice's court. §§ 4859-4861. Verification of pleadings. § 4193. Attachment. §§ 4291-4314. Proceedings for forfeiture. §§ 4766 et seq. Denial of corporate existence. § 4934. How proved. § 5279.

[Where one railroad company is consolidated with others under a new name, it ceases to exist as a corporation, and an action brought by or against it cannot afterward be prosecuted by or against it or in its original name. Ry. Co. v. Smith, 40 Kan. 192; s. c., 19 Pac. Rep. 636.]

Parol evidence is admissible to show that a resolution of the board of directors of a railroad company, entered upon the record of its proceedings, did not correctly recite the amount of money found due and ordered to be paid to one of its officers. R. R. Co. v. Tiernan, 37 Kan. 606; s. c., 15 Pac. Rep. 544.

When part payment of an officer's salary is an acknowledgment of liability for remainder. 1d.

Liability of corporation for unauthorized purchases by its officers. Getty v. Milling Co., 40 Kan. 281; s. c., 19 Pac. Rep. 617. For services of an attorney employed by general manager or president. R. R. Co. v. Grove, 39 Kan. 731; s. c., 18 Pac. Rep. 958; St. L., etc., Ry. Co. v. Kirkpatrick, 52 Kan. 104; s. c., 34 Pac. Rep. 400; Bank v. Berry, 53 Kan. 696; s. c., 37 Pac. Rep. 131. For note executed by corporate officers. R. R. Co. v. Tiernan, 37 Kan. 606; s. c., 15 Pac. Rep. 544; Massey v. C. B. & S. Assn., 22 Kan. 624.

A corporation may be guilty of fraud. Lewis v. Meier, 14 Fed. Rep. 311.

The existence of a corporation de facto cannot be called in question collaterally. Pape v. Bank, 20 Kan. 440; Douglas Co. v. Bolles, 94 U. S. 104. But an association of persons cannot have even a de facto corporate existence under the general law, without a bona fide intent to comply with such law. McLellan v. Hopkins, 41 Pac. Rep. 1061.

Where a liability is incurred before the organization of a corporation is completed, the persons assuming to act as directors are personally liable. Walton v. Oliver, 49 Kan. 107; s. c., 30 Pac. Rep. 172.

Before a stockholder can maintain an action in his own name to redress wrongs committed against the corporation, it must appear that he has in good faith, but without success, attempted to secure action by the directors or managing officers of the corporation, or that demand for their action would be unavailing. R. R. Co. v. Sumner Co., 51 Kan. 617; s. c., 33 Pac. Rep. 312.

Assumption by corporation of liabilities of its promoters. Davis v. Butler Co., 52 Kan. 693; s. c., 35 Pac. Rep. 776.

Liability of the promoters, as persons, to one dealing with them before legal organization. McLellan v. Hopkins, 41 Pac. Rep. 1061.

Promoters are liable for materials furnished by one elected by them as superintendent, where the organization of the corporation is defective. Potstone v. Mfg. Co., 41 Pac. Rep. 211.

When a new corporation answerable for liabilities of constituent companies. Berry v. R. R. Co., 52 Kan. 714; s. c., 36 Pac. Rep. 724.

Corporation liable in tort for personal injury to employee. Morbach v. Mining Co., 53 Kan. 731; s. c., 37 Pac. Rep. 122.

The interest of a stockholder is of a collateral nature, and not that of an owner, and he may sue the corporation for a personal injury. 1d.

Gas company has no standing in court to test the right of a rival company to use the streets for the same purpose, or the validity of ordinance granting the right. Mining & Gas Co. v. Gas & Mining Co., 55 Kan. 173; s. c., 40 Pac. Rep. 326.

A corporation is liable to an action for malicious prosecution commenced by an agent, only when the agent acted within the scope of his authority. Atchison, etc., Co. v. Brown, 48 Pac. Rep. 31.

A corporation formed by consolidation, which voluntarily adopted a petition in error of one of the constituent companies, held to have consented to be substituted as a party in a court below in a new trial. W. W. Ry. Co. v. Quinn, 48 Pac. Rep. 132.

Where a defendant corporation was consolidated with another company pending an action, held, that the consolidated corporation waived the lack of revivor and substitution. Curry v. Kansas City Ry. Co., 48 Pac. Rep. 579.

Corporate records and minutes are not competent evidence between strangers. Dolan v. Wilkerson, 48 Pac. Rep. 23.]

Third. To make and use a common seal, and alter the same at pleasure.

Seal requisite to corporate deeds. § 1198. Corporate records under seal, evidence. § 1199.

[A court of equity will not declare a contract between two corporations void because the corporate seals are not affixed to it (it being otherwise valid, but if necessary will rather compel the parties to affix their seals. R. R. Co. v. Miami Co., 12 Kan. 483.)]



## Corporate powers; change of name, etc.—Stat., §§ 1167–1170.

Fourth. To hold, purchase, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real, personal or mixed, as shall be requisite for such corporation to acquire, in order to obtain or secure the payment of any indebtedness or liability due to or belonging to the corporation.

Power to convey. §§ 1113, 1198.

[Where a corporation is authorized by its charter to loan money, it has an implied power to take mortgage security therefor, where the debt is bona fide, and created in the regular course of business. *Massey v. C. B. & S. Assn.*, 22 Kan. 624.]

Authority of corporate officers to execute a note. *R. R. Co. v. Tiernau*, 37 Kan. 606.]

Fifth. To appoint and remove such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

Principal officers, election of. § 1175.

[Parties employed by the president of a corporation appearing as an active agent in the execution of any work, have a right to assume that such officer is acting for the corporation, and that his acts in that respect are its acts and binding upon it. *R. R. Co. v. Jones*, 30 Kan. 601; s. c., 2 Pac. Rep. 657.]

Implied authority of agent of a foreign corporation. *St. John v. Cornwell*, 52 Kan. 712; s. c., 35 Pac. Rep. 785.]

Sixth. To make by-laws, not inconsistent with existing laws, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

See § 1176. May increase its stock. § 1171. And issue preferred stock. Act of 1895, at p. 2a. Transfer of stock. § 1184.

[The placing of a void provision in the by-laws of a corporation does not necessarily invalidate the organization. *Aultman v. Waddle*, 40 Kan. 201; s. c., 19 Pac. Rep. 730.]

Seventh. To enter into any obligation or contract essential to the transaction of its ordinary affairs.

See §§ 1180, 1183. May borrow money. § 1172. Penalty for ultra vires. § 4767. Business conducted by directors. § 1174.

[A corporation authorized to loan money has implied power to take mortgage security therefor. *Massey v. Assn.*, 22 Kan. 624.]

So long as it does not depart from terms of its charter, a corporation is clothed everywhere with the powers given it by its said charter, and has capacity to carry on its business and extend its operations in other States and countries. *R. R. Co. v. Fletcher*, 35 Kan. 236; s. c., 10 Pac. Rep. 536.

An act within the powers of a corporation, when regularly done, binds both the corporation and the stockholders. *Whetstone v. University*, 13 Kan. 320.

A Pennsylvania corporation which could not have an office or do business in that State cannot

do business in Kansas. *Land, etc., Co. v. Coffey Co.*, 6 Kan. 245.

Additional powers, auxiliary to the original purpose of a corporation, may be conferred thereon by the legislature. *R. R. Co. v. Fletcher*, supra.

What is essential to constitute a person a promoter of a corporation. *R. R. Co. v. Tiernau*, 37 Kan. 606; s. c., 15 Pac. Rep. 544.

A corporation may ratify by its acts the terms of a contract by which it would not, without such ratification, be bound. *W. U. Tel. Co. v. Ry. Co.*, 1 McC. 565.

Where a corporation goes outside of the scope of its legitimate business to make a contract, and that contract has been executed, and the corporation has received the benefits thereof, it will be enforced. *Holt v. Bank*, 25 Fed. Rep. 812.

A corporation which has enjoyed the benefits of a contract cannot plead that it was ultra vires, where no fraud is intended or has been committed. *Sherman C. T. Co. v. Morris*, 43 Kan. 282; s. c., 23 Pac. Rep. 563; *Town Co. v. Fletcher*, 46 Kan. 524; s. c., 26 Pac. Rep. 951.

Where a corporation has received benefits from others, upon contracts ultra vires or void because of some irregularity or want of power in their creation, but not void because made in violation of express law, or public policy, or good morals, and retains such benefits, it must pay for them. *Hamilton Co. v. Webb*, 47 Kan. 106; s. c., 27 Pac. Rep. 997.

Those who deny the authority of the president and secretary of a corporation to execute a contract on its behalf, regular on its face, take upon themselves the burden of establishing their claim. *Sherman T. Co. v. Swigart*, 43 Kan. 292; s. c., 23 Pac. Rep. 563.]

Eighth. To increase or diminish by a vote of its stockholders, cast as its by-laws may direct, the number of its directors or trustees, to be not less than three nor more than twenty-four, and may, in like manner, change its corporate name, without in any wise affecting its rights, privileges or liabilities.

See §§ 1169, 1170.

§ 1168. That all acts performed, and rights acquired and obligations incurred by corporations under the authority of said section eleven,\* of the act to which this is amendatory, are hereby saved to and against such corporation, notwithstanding the repeal of said section eleven.\*

§ 1169. Such change of name, or number of directors or trustees, shall take effect and be in force from the date at which the president or secretary of the corporation shall file with the secretary of State an affidavit, setting forth the name adopted, or the number of directors or trustees fixed, together with the date at which such change in name or number of directors or trustees was voted by the stockholders of such corporation.

Name. § 1162. See § 1167, subd. 8.

§ 1170. When the name of a corporation shall have been changed, as provided in this article, notice of such change shall be immediately thereafter published by the president or other chief officer of the corporation, for six successive weeks, in some

newspaper printed and published in the county in which the principal office of the corporation is located, and if there be no newspaper printed and published in such county, then in some newspaper having a general circulation therein.

Name. § 1162. Change of, not to be prejudicial. § 1197. See § 1167, subd. 8.

§ 1171. Any corporation may increase its capital stock to any amount not exceeding three times the amount of its authorized capital, by a vote of the stockholders in conformity with the by-laws thereof; or such corporation may increase its capital stock to any amount by a vote of the stockholders in conformity with the by-laws thereof, by an actual bona fide additional paid-up cash subscription thereto, equal to the amount of such increase; and if a majority of the stockholders shall vote for the increase of stock, the same may be increased by the board of directors, trustees or other business manager of such corporation; and upon such increase of stock being made in accordance with the by-laws, the date and amount of such increase shall be certified to the secretary of State by the directors or trustees, and from the time such certificate is filed, the increase of stock shall become a part of the capital thereof. Such certificate shall be filed and recorded in the same manner as the charter: Provided, That co-operative associations organized under the provisions of this act may, in the manner hereinbefore provided, further increase their capital stock to any amount not exceeding one hundred thousand dollars.

Corporation may issue preferred stock. Act of 1895, at p. 29.

[Stockholders who have voted for an unauthorized doubling of stock by their company, or who have voluntarily accepted benefits of such action, or who bought into the corporation subsequent to the issuance of such stock, are estopped, as against the corporation, to contest the legality of such action. *Venner v. R. R. Co.*, 28 Fed. Rep. 581.]

§ 1172. Corporations shall have power to borrow money on the credit of the corporation not exceeding its authorized capital stock, and may execute bonds or promissory notes therefor, and may pledge the property and income of the corporation: Provided, however, That the provisions of this section shall not apply to the debentures or bonds of any loan or trust company, duly incorporated under the provisions of this chapter, the payment of which debentures or bonds shall be secured by a transfer of real estate or by other securities for the benefit and protection of purchasers of said debentures or bonds; such collaterals to be at least equal in amount to the par value of such bonds or debentures, and all real estate

mortgage securities to be first liens on the property on which loans are made.

General powers. § 1167. Forgery. § 2275. Preferred stock. Act of 1895, at p. 29.

[A loan to a corporation, duly organized under the laws of the State, to be used as conditional stock, with the agreement by the directors of the association that while it is used it shall have the same advantage as other stock, but may be withdrawn at any time by giving thirty days' notice to the agent in writing. Held, that after giving the notice required in said agreement, plaintiff was entitled to a return from the corporation of the money so loaned. *Hinton v. Soc.*, 21 Kan. 663.]

§ 1173. Whenever the full amount of the capital stock of a corporation having a capital stock shall not have been already subscribed in good faith, the directors or trustees named in the charter, or a majority of them, shall within three months after the filing of the charter, cause books to be opened for receiving subscription to the capital stock of the corporation at such time or times, and at such place or places, as they may determine, after having given at least thirty days' notice, in a newspaper published or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books, which books shall be kept open till the whole amount of capital stock is subscribed.

Payment of subscriptions. §§ 1186–1188.

[See *Hunt v. Bridge Co.*, 11 Kan. 412; *R. R. Co. v. Comrs.*, 36 id. 121; s. c., 12 Pac. Rep. 593.

A legislative act authorizing certain counties and cities to subscribe to stock of coal and gas companies, held to be unconstitutional. *Genesee v. Gas Co.*, 55 Kan. 358; s. c., 40 Pac. Rep. 655.

An indefinite agreement to subscribe for capital stock in a corporation to be organized which does not satisfy the amount of capital stock to be employed, nor state what proportion of the stock subscribed anyone is to take, nor when or by whom the company is to be organized, cannot be enforced. *Coal Co. v. Settle*, 51 Kan. 424; s. c., 38 Pac. Rep. 483.]

§ 1174. A majority of the directors or trustees shall constitute a quorum, and be competent to fill vacancies in the board and to transact all business of the corporation. An annual election shall be held for directors or trustees, at such time and place as the by-laws of the corporation may require.

Voting, manner of. §§ 1155, 1185. Failure to hold election. § 1178. Number of directors may be increased. § 1177. Powers and duties. § 1180.

[See note to next section. The general rule is, that directors have no implied authority to act singly; they can act only as a board. It is also the general rule that where no provision is made in the statute, or in the by-laws of a corporation, for the notice required for regular meetings of directors, or the mode of calling special meetings, all meetings must be called by special notice, to be given to each director. *Bank v. Shumway*, 49 Kan. 226; s. c., 30 Pac. Rep. 411.]

## Directors: by-laws — Stat., §§ 1175-1180.

§ 1175. The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer of the corporation. The directors or trustees, before entering upon their duties, shall each take an oath or affirmation, faithfully to discharge the duties of his office.

Election of subordinate officers. § 1667, subd. 5. Annual report of officers. § 1181. Treasurer's office must be within the State. § 1196.

[A member of board of directors appointed by said board to act as treasurer, secretary or other ministerial officer of the corporation, is prima facie entitled to a reasonable compensation for his services as such. *Bank v. Drake*, 29 Kan. 311. If said officer assumes the duties upon an express contract as to compensation, such contract controls. *Id.*

The doctrine that directors of a bank are conclusively presumed to know its financial condition, as shown by its records and books, cannot be invoked to uphold a wrongful appropriation of money by an officer, which appropriation is made and entered on the books without actual knowledge of directors. *Id.*

An agent of a corporation who, acting as an individual, purchases corporate property from himself as agent, is liable to the corporation for the actual value of property so purchased. *Id.*

It is no defense to an action brought by a bank against its late cashier for a wrong appropriation of moneys, that at time of such appropriation he was owner of four-fifths of the stock in the bank, and has since that time sold all of said stock to other parties, who are now the officers and managing authority of the bank. *Id.*

Parties employed by the president of a corporation appearing as an active agent in the execution of any work, have a right to assume that such officer is acting for the corporation, and that his acts in that respect are its acts and binding upon it. *R. R. Co. v. Jones*, 30 Kan. 691; s. c., 2 Pac. Rep. 657.

A corporation may call its officers to account for their willful abuse of the trust, or for misapplication of corporate funds, or for any profits realized under a fraudulent contract. *Ryan v. R. R. Co.*, 21 Kan. 365.

Irregularities in election of officers, where all the stockholders and officers of the corporation recognize such election as valid, will not relieve a stockholder from paying his subscription to the capital stock. *Ginrich v. Mill Co.*, 21 Kan. 61.

Authority of corporate officers to execute a note, how proved. *R. R. Co. v. Tiernan*, 37 Kan. 606; s. c., 15 Pac. Rep. 544. Compensation of officers, see *id.*

When the offices of vice-president and treasurer are vested in one person, who is at the same time the managing and controlling officer, his relations to creditors and stockholders are of a fiduciary character and will not permit him to manage corporate affairs so as to result to his own pecuniary advantage. *Thomas v. Sweet*, 37 Kan. 183; s. c., 14 Pac. Rep. 545.

Where it is understood by the directors of a corporation that its officers are to be paid for services though no salary is fixed, a note given at the end of the year for a reasonable sum then agreed upon is valid. *Stewart v. Ry. Co.*, 41 Fed. Rep. 736.

Authority of officers of a corporation to execute notes and mortgages. *Baker v. Harpster*, 42 Kan. 511; s. c., 22 Pac. Rep. 415.

Those who deny the authority of president and secretary to execute a contract on behalf of the corporation, regular on its face, take upon themselves the burden of establishing their claim. *Sherman T. Co. v. Swigart*, 43 Kan. 292; s. c., 23 Pac. Rep. 569.]

§ 1176. The directors or trustees may adopt by-laws for the government of the corporation; but such by-laws may be altered,

changed or amended by a vote of the stockholders, at an election to be ordered for that purpose, by the directors or trustees, on the written application of a majority of the stockholders or members.

See § 1167, subd. 6. By-laws may prescribe method of paying subscriptions. § 1186. And time and place of elections. § 1174. And of declaring dividends. § 1180. And of transfer of stock. § 1184.

[A by-law of a corporation can have no effect upon the contract of a corporation with other parties, and is a mere rule for the government of the officers of the company in managing their own business. *Samuels v. Holliday*, M. C. C. 214.

When it is provided by the by-laws of the corporation that compensation of officers shall be fixed and allowed by board of directors, and the board has not fixed any compensation, a secretary who has rendered services is entitled to recover therefor, unless there was an understanding that he was to render such services without compensation. *R. R. Co. v. Richards*, 8 Kan. 191.]

§ 1177. All corporations heretofore created and now in existence under any law in [of] this State, are hereby authorized to increase the number of directors or trustees of any such corporation.

§ 1178. In case it should happen that an election for directors or trustees should not be held on the day appointed by the by-laws of any corporation formed under the provisions of this act, such corporation shall not, for that reason, be deemed to be dissolved, but it shall be lawful on any other day to hold a meeting and elect its directors or trustees in such manner as shall be prescribed by the by-laws thereof.

See § 1174.

§ 1179. The secular affairs of a religious corporation shall be under the control of a board of trustees, to be elected by the members of such corporation, and the title to all property of any such corporation shall vest in such trustees.

§ 1180. The directors or trustees shall have the general management of the affairs of the corporation, and may dispose of the residue of the capital stock at any time remaining unsubscribed, in such manner as the by-laws may prescribe. They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions, and their books and records shall, at all reasonable times, be open to the inspection of any and every stockholder. They shall also, when required by one-third of the stockholders thereof, present reports in writing of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation, as they shall deem expedient, or as the by-laws may prescribe.

Directors, election of. § 1174. Oath of. § 1175. Increase of. § 1177. Individual liability of. § 1180. Shall be trustees of dissolved corporation. §§ 1202-1203.

[Directors of a corporation are its primary agents, and, in reference to corporate property, act in the relation of trustee. Such relation requires of them the utmost good faith in their transactions for the corporation and its stockholders, and does not permit them to manage its affairs for their personal advantage. *Ryan v. R. R. Co.*, 21 Kan. 365.]

When stockholders may maintain an action against officers. *Id.*

The officers and directors of a corporate body are trustees of the stockholders, and in securing to themselves an advantage not common to all stockholders, they commit a plain breach of duty. *Bank v. Drake*, 29 Kan. 321; *Koehler v. Iron Co.*, 2 Black (U. S.), 715.

The relation between directors and stockholders is that of trustee and cestui que trust, and a contract made by a director to secure personal advantage to himself is either void or injures to the benefit of the corporation. *Sargent v. K. M. R. R. Co.*, 48 Kan. 672; s. c., 29 Pac. Rep. 1063.

Directors of an insolvent corporation, who are creditors of the same, cannot take advantage of their position to secure a preference for themselves, and must share ratably with the other general creditors in the distribution of the company's assets. *Hays v. Bank*, 51 Kan. 555; s. c., 33 Pac. Rep. 318.

Before a stockholder can maintain an action in his own name to obtain a remedy for wrongs committed against the corporation, it must appear that he has in good faith, but without success, attempted to secure action by the directors or managing officers of the corporation, or that demand for their action would be unavailing. *R. R. Co. v. Sumner Co.*, 51 Kan. 617; s. c., 33 Pac. Rep. 312.

Where a liability or debt is incurred before the organization of a corporation is completed, the persons assuming to act as directors are personally liable. *Walton v. Oliver*, 49 Kan. 107; s. c., 30 Pac. Rep. 172.

In all elections for directors of the corporation created by or existing under the laws of Kansas, at least three must be citizens and residents of the State. *Horton v. Wilder*, 48 Kan. 222; s. c., 29 Pac. Rep. 566.]

§ 1181. It shall be the duty of the president and secretary of each corporation for profit, annually, on the first day of January, to prepare, under their own oaths, and deposit in the office of the secretary of State of this State, a detailed statement of the condition of such company on the thirtieth day of December, then next preceding, exhibiting the following, namely: First, The amount of the capital stock of the company. Second, The property or assets held by the company. Third, The liabilities of such company. Fourth, The receipts of the company during the preceding year. Fifth, The expenditures during the preceding year. Every corporation for profit, created under any law of this State, failing to make and deposit such statement, shall be subject to a penalty of two hundred dollars, and an additional two hundred dollars for every month that such company shall continue thereafter to transact business.

§ 1182. The duration of any corporation may be continued, and its corporate existence extended, under and subject to the general laws of this State, for successive periods of twenty years, or for such length of time as may be stated in its certificate thereof, by the filing with the secretary of State, at any time, a certificate of its desire and intention

to extend its time of existence as aforesaid, signed and duly acknowledged before some proper officer, by the president and secretary of such corporation, after being authorized by its board of directors or its trustees, and approved by two-thirds of its stockholders, in writing, or by a two-thirds vote of its stockholders present at any meeting duly and legally called and held for that purpose; and thereupon, and from the date of the filing of said certificate, the time of the existence of such corporation shall be continued and extended for a further period of twenty years, or for such period as may be set forth in said certificate, with all the powers, rights, and franchises, and subject to all the duties and obligations, of corporations of its class by the general laws of this State: Provided, That nothing herein contained shall be held or construed to extend or continue to any corporation organized or existing under any special charter or any general or special law of the territory of Kansas, any special franchise, privilege, immunity, or exemption not possessed by corporations organized under the general law; but by accepting or availing itself of the provisions of this act, any such corporation shall be deemed and held to waive and surrender any and all such special franchises, privileges, immunities, and exemptions.

Limit of existence. § 1667, subd. 1, and cross-references.

[See *State v. Bridge Co.*, 22 Kan. 438.]

§ 1183. No corporation created under the provisions of this act, shall employ its stock, means, assets, or other property, directly or indirectly, for any other purpose whatever, than to accomplish the legitimate objects of its creation.

General powers. § 1167. How corporate power proved. § 5279. Ultra vires, penalty. §§ 4766 et seq.

[Legislature of State where a corporation is created may confer upon it additional auxiliary powers. *R. R. Co. v. Fletcher*, 35 Kan. 236; s. c., 19 Pac. Rep. 596.]

The vice-president and secretary of a manufacturing corporation, although the active managers of its business, have no authority to bind it by a promise to pay the debts of another and distinct corporation. *Rahm v. Mfg. Co.*, 16 Kan. 277; see, also, *Ehrgott v. Mfg. Co.*, 16 Kan. 486.

A bank organized under the laws of Kansas cannot purchase its own stock, except in some cases to secure a previously existing debt. *Bank v. Wulfekuhler*, 19 Kan. 60.

The directors of a bank have no power to purchase the stock of such bank. *Abeles v. Cochran*, 22 Kan. 405.

A. entered into a verbal contract with D., a director of a bank, to purchase fourteen shares of stock in the bank, at \$140 per share, upon the consideration that he should be made cashier, D. refusing to carry out his part of the contract, N. brought this action to recover damages for the breach thereof. Held, that the contract was void, being against public policy. *Noel v. Drake*, 28 Kan. 265.

## Stock; votes for directors; installments — Stat., §§ 1184-1187.

The owners of a graded railroad bed can sell the same to a railroad company, whose officers, directors and stockholders are composed of the owners of the roadbed, and receive in payment therefor shares of the capital stock of the railroad company at a time when those who sell the roadbed and own and control the railroad company are the absolute owners of all the stock issued by the railroad company, and where the transaction occurs months before any other or additional stock is issued by the railroad company. *R. R. Co. v. Tiernan*, 37 Kan. 606; s. c., 15 Pac. Rep. 544.

A corporation may call its officers to account for their willful abuse of the trust, or for any misapplication of the funds of the corporation, or for any profits realized under a fraudulent contract. *Ryan v. R. R. Co.*, 21 Kan. 365.]

§ 1184. The stock of any corporation created under this act shall be deemed personal estate, and shall be transferable only on the books of the corporation, in such manner as the by-laws may prescribe; and no person shall, at any election, be entitled to vote on any stock, unless the same shall have been standing in the name of the person so claiming to vote, upon the books of the corporation, at least thirty days prior to such election; but no shares shall be transferred until all previous assessments thereon shall be fully paid.

Power to regulate transfers. § 1667, subd. 6. Stock is personal estate for purposes of taxation. § 6847.

[The assignment of a share of stock from one owner to another conveys and transfers not only the stock, but as incident thereto, the right to share in the profits of the corporation, in the proportion which the stock so transferred bears to the whole capital stock used in the enterprise for which the corporation was organized. *Ryan v. R. R. Co.*, 21 Kan. 365.

To make a valid transfer of stock, the transfer must be made on the books of the corporation. *Topeka Co. v. Hale*, 39 Kan. 23; s. c., 17 Pac. Rep. 601.

A valid transfer of corporate stock can only be made on the books of the company, and the mere assignment and delivery of stock certificates will not divest the transferor of individual liability on such sale. *Plumb v. Bank*, 48 Kan. 484; s. c., 20 Pac. Rep. 699.

What is sufficient record of transfers within the meaning of the statute. *Id.*

Unless prohibited by law, a corporation may become the holder of a portion of its shares of stock. *Johnson Co. v. Thayer*, 94 U. S. 631.

The general rule is, that shares of stock are personal property, and may be transferred like any other property, unless the transfer is restrained by the charter or articles of association, and that a bona fide transfer terminates the liability of a transferor either to the company or creditors. *Van Demark v. Barons*, 52 Kan. 779; s. c., 35 Pac. Rep. 798.]

§ 1185. In all elections for directors or trustees of any incorporated company each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares so held by him or her in said company, multiplied by the number of directors or trustees to be elected at such election, and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, and such directors or managers shall not be elected in any

other manner: Provided, however, That in the election of directors or trustees of co-operative associations that have or may hereafter by their by-laws so determine, no stockholder shall be allowed to cast more than one vote, multiplied by the number of directors or trustees of any such association.

Every stockholder shall vote. § 1155.

§ 1186. The board of directors or trustees of any corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner, and in such installments, as may be required by the by-laws.

See §§ 1173, 1192.

[A stockholder will not be relieved from paying amount of his subscription to stock of a corporation created to build and maintain a flouring mill, by the fact that it is expending its money in building a mill dam. *Ginrich v. Mill Co.*, 21 Kan. 61. Nor by reason of irregularities in adopting by-laws, or in the election of officers, where all stockholders and officers recognize and treat such by-laws and such election as legal and valid. *Id.*

When ten per cent. of the capital stock of a bridge company has been subscribed, and the company has organized under the provisions of said act, by electing directors and other proper officers, the company is then legally organized for the transaction of all business of the corporation and may compel each stockholder to pay the full amount of his stock for which he has subscribed, although only ten per cent. of the capital has yet been taken by individual stockholders. *Hunt v. Bridge Co.*, 11 Kan. 412.

A parol agreement made at the time of subscribing for stock, and inconsistent with the written terms of the subscription, is immaterial, incompetent and void. *Topeka v. Hale*, 39 Kan. 23; s. c., 17 Pac. Rep. 601.

An agreement to pay assessments on the stock contained in book of subscription and signed by the parties sought to be charged, will bind him, notwithstanding some verbal understanding or agreement that some other member of the corporation will relieve such party from such stock and liability. *Id.*

A subscription for shares in a corporation thereafter to be formed under a general law, may be accepted by the board of directors after organization. *McCormick v. Gas Co.*, 48 Kan. 614; s. c., 20 Pac. Rep. 1147. Original subscription held irrevocable. *Id.*

Where property is conveyed to the corporation in payment for shares of its capital stock, and the transaction is made a matter of record and subsequently approved and ratified by all the officers and stockholders of the corporation, such shares will, in the absence of fraud, be treated as fully paid. *Wallburn v. Chénault*, 43 Kan. 352; s. c., 23 Pac. Rep. 657.]

§ 1187. If any stockholder shall neglect to pay any installment, as required by the board of directors or trustees, the directors or trustees may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors or trustees have caused a notice, in writing, to be served on him personally, or by depositing the same in the post-office, properly directed to him at the post-office nearest his usual place of residence, stating that he is required to make

## Dividends; general office; execution — Stat., §§ 1188-1192.

such payment at the time and place specified in said notice, and that if he fails to make the same, his stock, and all previous payments thereon, will be forfeited for the use of the company; which notice may be served as aforesaid, at least thirty days previous to the day on which such payment is required to be made.

[Where it is claimed by a stockholder that the stock held by him had been canceled, but no resolution or minute is adopted by the board of directors, and no record thereof is made, and it is also shown that the stockholder continued to act as an officer of said company after such claim of cancellation, the question of cancellation under such circumstances is a fact to be found by the court. *Tepeka Co. v. Hale*, 39 Kan. 23; s. c., 17 Pac. Rep. 601.]

§ 1188. All bodies corporate may sue for, recover and receive from their respective members, all arrears or other debts, dues and other demands, which now are, or hereafter may be, owing to them, in like mode, manner, and form, as they might sue for, recover and receive the same from any person who might not be one of their body.

[Court may permit an amended petition to be filed, showing the expiration of the life of a corporation, the date of its dissolution, and the name of its sole manager at the time of such dissolution, in an action commenced by the sole manager of the corporation, in the corporate name after its dissolution to recover certain debts and property of the dissolved corporation. Upon the filing of such amended petition, the action must be continued in the name of the manager of the late corporation, corresponding with the allegation of the amended petition. *Paola Co. v. Krutz*, 22 Kan. 727.]

§ 1189. If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted, as long as they shall respectively continue in office. The amount for which they shall all be so liable shall not exceed the amount of such dividend; and if any of the directors shall be absent, at the time of making the dividend, or shall object thereto at the time such dividend is declared, and shall file their objection in writing, with the secretary or other officer of the corporation, having charge of the books, they shall be exempted from the said liability.

See § 1180.

[Stockholders of a corporation are not entitled to any division of the profits and moneys of the corporation until all its debts are paid. *Ryan v. Ry. Co.*, 21 Kan. 365.]

§ 1190. Every corporation created by or existing under the laws of this State, shall have and keep a general office for the transaction of business, and shall keep such office

within this State, and shall have at least three of its directors citizens and residents of this State; and in case such corporation is a railroad or a railway company, it shall have such general office located on or near the main line of its road or route mentioned in its charter. At such general office shall be kept the records and books of the corporation, and also of the office of the superintendent, general manager or director, secretary, auditor, treasurer and paymaster, general freight agent and general ticket agent, under whatever name the duties usually pertaining to such offices may be transacted, together with all books of account appertaining to the business of such offices.

Treasurer's office must be within State. § 1196. Certificate must state principal place of business. § 1161.

§ 1191. Any corporation failing or refusing to obey any of the provisions of the first section of this act for the period of six months, shall be deemed to have forfeited its charter, and such forfeiture may be decreed by any district court of any county in which such corporation may do business, or into which any line of such railroad or railway may extend, in an action to be instituted for that purpose, in the name of the State of Kansas, by the county attorney of the county in which such action is prosecuted.

## ARTICLE IV. MISCELLANEOUS PROVISIONS.

Sec. 1192. When execution may issue against stockholder, and when proceeded against by action.

1193. Clerk having charge of books to furnish names, etc.

1194. Charter may be extended, when.

1195. Petition and notice.

1196. Treasurer to keep office and funds in this State.

1197. Misnomer shall not defeat gift, grant, etc.; change of name not prejudicial.

1198. How corporations may convey lands.

1199. Records of corporation, or authenticated copies, shall be competent evidence.

§ 1192. If any execution shall have been issued against the property or effects of a corporation, except a railway or a religious or charitable corporation, and there cannot be found any property whereon to levy such execution, then execution may be issued against any of the stockholders, to an extent equal in amount to the amount of stock by him or her owned, together with any amount unpaid thereon; but no execution shall issue against any stockholder, except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court, after reasonable notice in writing to the person or persons sought to be charged; and, upon such motion, such court may order execution to issue accord-

## Execution; public improvement; extension of time — Stat., §§ 1193-1195.

ingly; or the plaintiff in the execution may proceed by action to charge the stockholders with the amount of his judgment.

See Const., art. XII, § 2, and cross-references.

[Stockholders' claims are subordinate to those of creditors. *Ryan v. Ry. Co.*, 21 Kan. 365.

An execution may issue against a stockholder after judgment and return of nulla bona against the corporation to an extent equal in amount to the amount of stock owned by such stockholder. *Bank v. Soc.*, 28 Kan. 423.

Where the cashier of a bank gives a credit to a person having an overdrawn account, which has been overdrawn for several months, for an insufficient and illegal consideration, such officer is bound to know the same within less than several days thereafter, and also to know when his bank is in an embarrassed condition. *Bank v. Wulfekuhler*, 19 Kan. 60.

The acts of the cashier in said transaction cannot estop the bank as against W., who is a director and the vice-president of the bank. *Id.*

Sufficiency of petition to establish the defendant's liability as a stockholder in a corporation. *Head v. Daniels*, 38 Kan. 1; s. c., 15 Pac. Rep. 911.

The notice required under above section is in the nature of an original process, and must be served substantially like a summons in a personal action. The service of such notice beyond the jurisdiction of the court will not confer jurisdiction or authorize the court to award an execution against the property of stockholders that may be found within the State. *Grund v. Tucker*, 5 Kan. 70; *Hentig v. James*, 22 Kan. 326; *Howell v. Manglesdorf*, 33 id. 194; s. c., 5 Pac. Rep. 759.

As to proceedings in aid of executions under above section, see *Hentig v. James*, supra.

A judgment creditor of an insolvent corporation who first moves, in conformity to the provisions of above section, to charge a stockholder on his liability, acquires a priority of right to recovery against such stockholder, with which a creditor subsequently moving cannot rightfully interfere. *Wells v. Robb*, 43 Kan. 201; s. c., 23 Pac. Rep. 158.

What is sufficient notice, under above section, to charge stockholders. *Id.*

In a proceeding by a creditor of a corporation against a stockholder thereof, under above section, such stockholder cannot purchase claims against the corporation at a discount, and then set them off against his liability at their face value. He can only set off such claims, in discharge of his liability, to the amount actually paid by him therefor. *Abbey v. Long*, 44 Kan. 688; s. c., 24 Pac. Rep. 1111.

If the stockholder contests his liability, and the contest is decided against him, it is not error to tax the cost of such proceeding against him. *Id.*

No appeal from order of justice against stockholder under above section. *Healey v. Deepwater Co.*, 48 Kan. 617; s. c., 29 Pac. Rep. 1088.

Rights of stockholders and creditors construed. *Pickens v. Taylor*, 47 Kan. 294; s. c., 27 Pac. Rep. 986.

Judgment creditors of a corporation seeking enforcement of their rights against stockholders thereof, under above section, must strictly comply with its provisions. *Hoyt v. Bunker*, 50 Kan. 574; s. c., 32 Pac. Rep. 126.

Such creditors cannot resort to the funds in the hands of the stockholders of said corporation to satisfy their judgments against it until they have exhausted the corporate property. *Id.* The corporation has no power to entertain motions for orders allowing executions against stockholders, until the record of the case in which the motion is made shows that the corporate property has been exhausted. *Id.* Priorities among creditors. *Id.*

In order to charge persons as stockholders it must be shown that they subscribed to the stock of the particular corporation on account of which the liability is claimed, or that they have, in some manner, recognized their liability as such stockholders. *Bank v. Votaw*, 51 Kan. 362; s. c., 32 Pac. Rep. 1111.

The mere signing of subscription paper for stock in a contemplated company held not to render defendants liable to creditors of the corporation as stockholders. *Id.*

The liability of a stockholder against whom an execution may be issued under provisions of above section is measured by the number of shares held by him at time execution against the property of the corporation is found to be ineffectual. *Van Demark v. Barons*, 32 Kan. 779; s. c., 35 Pac. Rep. 798.

A motion made under above section, for execution against a stockholder, can only be made in a court where the judgment against the corporation was rendered, and from which execution on such demand might issue. *McClelland v. Cragun*, 54 Kan. 599; s. c., 38 Pac. Rep. 776. Notice of the motion for execution in such case may be served on the stockholder in any county in this State. *Id.* What is sufficient notice to confer jurisdiction. *Id.*

An agreement to purchase stock in the future which has not been acted upon for three years does not create an individual liability on the part of the signers as to creditors of the corporation. *U. S. W., etc., Co. v. Davis*, 42 Pac. Rep. 590.

Execution against a stockholder under above section cannot be granted until the case shows that the corporate property has been exhausted. *Carrey Lumb. Co. v. Neal*, 42 Pac. Rep. 925.

A summary process to enforce the liability of a stockholder in an insolvent corporation cannot be legal against the estate of a deceased stockholder. *Achenbach v. Coal Co.*, 42 Pac. Rep. 734; *Same v. W. N. Union*, *Id.*

Two or more creditors of an insolvent corporation may proceed together against the stockholder to enforce his statutory liability. *Buist v. Bank*, 46 Pac. Rep. 718.

In an action against a delinquent stockholder of an insolvent corporation, he may show that he was fraudulently induced to subscribe to the capital stock. *Beal v. Dillon*, 47 Pac. Rep. 217.

An assignee of an insolvent corporation may sue a delinquent stockholder to collect an unpaid subscription. *Id.*

In proceedings to enforce the liability of stockholders, a creditor cannot include several judgments in one notice. *Bank v. Magnuson*, 47 Pac. Rep. 518.]

§ 1193. The clerk or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney, with the names and places of residence of the stockholders (so far as known), and the amount of stock held by each, as shown by the books of the corporation.

§ 1194. Whenever any company heretofore incorporated for the purpose of erecting any public improvement in this State, whose charter is limited as to the time for completion of said improvement, and when any such company has been legally organized and has actually commenced and has in progress towards completion such public improvement, it shall be lawful for any such company to have further time allowed for the final completion of said work, as is hereinafter provided.

§ 1195. Upon petition being filed by the directors of the corporation in the probate court of any county in which the principal office of such corporation is located, and upon giving thirty days' notice by publication in a newspaper of general circulation in said county, of the object

and prayer of such petition, said court shall, at any regular term after publication of said notice, on good cause shown, decree the extension of the time for the completion of said improvement, to such period as shall appear to such court just and reasonable.

§ 1196. All corporations or joint-stock companies of every description, whether organized and acting under a special charter or the general law of the State, shall keep the office of their treasurer, or other officer or person keeping the funds, earnings or income of the corporation, within this State; and all earnings, income, profits and moneys collected by any corporation or joint-stock company operating under the law of this State, until the same is disbursed or divided by the directors or other officers authorized to make division.

General office must be within State. §§ 1190, 1191.

§ 1197. No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, devise or bequest to the same; nor shall a change in the name of a corporation prejudice any person not having actual notice thereof.

Corporate name. § 1162. Change of. §§ 1169, 1170.

§ 1198. Any corporation may convey lands by deeds, sealed by the common seal of the corporation, and signed by the president, vice-president, or presiding member or trustee of said corporation; and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the same manner provided for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. And that all deeds purporting to convey real estate, provided by this section, and heretofore signed and acknowledged by the vice-president of such corporation, and sealed as herein stated, shall have the same force and effects as if the same had been signed by the president thereof.

Power to convey. §§ 1113, 1167, subd. 4.

§ 1199. The records of any company, incorporated under the provisions of any statute in (of) this State, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceeding to which such corporation may be a party.

[Parol evidence is admissible to show that a resolution of the board of directors of a railroad company, entered upon the records of its proceedings, did not correctly recite the amount of money found due in order to be paid to one of

its officers. *R. R. Co. v. Tiernan*, 37 Kan. 606; s. c., 15 Pac. Rep. 544.]

Corporate records and minutes are not competent evidence as between strangers. *Dolan v. Wilkerson*, 48 Pac. Rep. 23.]

## ARTICLE V. DISSOLUTION OF CORPORATIONS.

Sec. 1200. How dissolved.

1201. Limit for commencing operations.

1202. Directors shall be trustees in the case of dissolution, when, and their powers and duties.

1203. Trustees shall be responsible to creditors and stockholders.

1204. Suit may be brought against stockholders, when.

1205. May compel contribution, when.

1206. Liable to what amount.

§ 1200. A corporation is dissolved—first, by the expiration of the time limited in its charter, second, by a judgment of dissolution rendered by a court of competent jurisdiction; but any such corporation shall be deemed to be dissolved for the purpose of enabling any creditors of such corporation to prosecute suits against the stockholders thereof to enforce their individual liability, if it be shown that such corporation has suspended business for more than one year, or that any corporation now so suspended from business shall for three months after the passage of this act fail to resume its usual and ordinary business.

Time limit. § 1167.

[The statements in a petition that an incorporated bank has long since ceased to transact business, is insolvent, and has no property or assets of any description out of which money alleged to be due can be collected by execution or otherwise, are not equivalent to an allegation that the corporation is dissolved. *Bank v. Cong. Soc.*, 28 Kan. 423.]

An action for the dissolution of a corporation was settled by the parties before judgment by a written stipulation in the case; a petition by a third party to be made a party defendant, to contest plaintiff's case upon its merits, was properly overruled. *Roller v. Snodgrass*, 14 Kan. 583.

Stockholders who organize themselves as a corporation, transact business, and hold themselves to the world as such corporation, cannot deny their liability as stockholders therein when proceeded against by creditors, on the ground that the preliminary steps of the organization were irregular. *Aulman v. Waddle*, 40 Kan. 155; s. c., 19 Pac. Rep. 730. See case from 28 Kan. 426.

Certain facts held not to have worked a dissolution. *Eureka, etc., Co. v. City*, 48 Pac. Rep. 935.]

§ 1201. Every corporation created under this act, or any general law of this State, shall commence active operations within five years after filing its charter with the secretary of State, and in default thereof said corporation shall become and be dissolved.

See § 1165.

§ 1202. Upon the dissolution of any corporation already created by or under the laws of this State, unless a receiver is appointed by some court or competent authority, the



## Dissolution — Stat., §§ 1203-1205.

president and directors, or managers of the affairs of the corporation, at the time of its dissolution, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation, at the time of its dissolution, as far as such money and property will enable them; and for this purpose they may maintain or defend any judicial proceeding.

[An action brought by the sole manager of a corporation, after its dissolution, to recover its debts and property, must be brought in name of such manager and not in corporate name of the dissolved corporation. *Paola Town Co. v. Krutz*, 22 Kan. 727.

Unless a receiver is appointed upon dissolution, the president and directors, or managers of the affairs of the corporation, are the trustees of the creditors and stockholders, with full power to settle its affairs, and may maintain or defend any judicial proceeding to that end. *Id.*

Actions by dissolved corporation against its members. *Id.*

Held, that when a bridge corporation expired by limitation, its franchises and license to demand toll expired. *State v. Bridge Co.*, 22 Kan. 438.

It is not error for the trial court, in its discretion, to refuse to enter judgment on a verdict in favor of an extinct corporation, and to set aside the verdict and grant a new trial, upon the payment of all costs by the defendant, although existence of corporation is not raised in the pleadings, and expiration of charter is proved by documentary evidence offered in behalf of the corporation. *Chair Co. v. Kelsey*, 23 Kan. 622.

A corporation was, by its charter, to continue its existence for five years. At the end of that period, S. commenced an action against the corporation and others to recover land which he had conveyed to it, claiming that the corporation had been dissolved by lapse of time, and that the land had reverted to him. Held, that such claim was not tenable. *Sword v. Wickersham*, 29 Kan. 746.

Trustees or directors of a dissolved corporation cannot act for their own private advantage. See note to § 1140.

Officers and stockholders of an insolvent corporation cannot distribute the capital and assets among themselves in payment of indebtedness due them. Any excluded creditor will be entitled to pursue such assets into the hands of any person who has taken the same with full knowledge of the facts. *Bridge Co. v. Fowler*, 35 Kan. 17; *s. c.*, 39 Pac. Rep. 727. Directors and managers cannot enter into an arrangement to secure to themselves preference over other creditors. *Id.* Where a receiver of a corporation brings an action upon judgment in favor of said corporation, the statute of limitations does not run during the pendency of such action. *Id.*

§ 1203. The trustees mentioned in the last section shall be severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall have come into their hands.

[Directors of corporations in reference to corporate property act in the relation of trustees, and can make no division of such property which shall not give to each stockholder his proportionate share. *Hale v. Rep. Co.*, 8 Kan. 466.

While a trustee is not an insurer he is, nevertheless, bound to the utmost good faith, may acquire no interest adverse to the trust and must

exercise such care and diligence in respect to the discharge of the trust as, under all circumstances, having regard to the magnitude of the trust and interests involved and the consequences of mistake, would be reasonable. *Morrow v. Saline Co.*, 21 Kan. 484.]

§ 1204. If any corporation, created under this or any general statute of this State, except railway or charitable or religious corporations, be dissolved, leaving debts unpaid, suits may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the corporation in such suit; and if judgment be rendered, and execution satisfied, the defendant or defendants may sue all who were stockholders at the time of dissolution, for the recovery of the portion of such debt for which they were liable, and the execution upon the judgment shall direct the collection to be made from property of each stockholder, respectively; and if any number of stockholders defendants in the case shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved.

See Const., art. XII, § 2, and cross-references.

[In an action brought against an incorporated bank to recover money due upon a certificate of deposit in which the petition fails to show that the bank is dissolved or that primarily there is a liability against the stockholders within the terms of the statute, no judgment can be rendered against the stockholders; if the execution issued thereon against the property of the corporation be returned nulla bona, execution may then issue against any of the stockholders to an extent equal in amount to the stock owned by him. *Bank v. Soc.*, 28 Kan. 423.

Stockholders who organize themselves as a corporation, transact business, and hold themselves out to the world as such corporation cannot, when proceeded against by creditors, set up as a defense that the preliminary steps of the organization were irregular; nor can they deny their liability as stockholders therein. *Antman v. Waddle*, 40 Kan. 195; *s. c.*, 19 Pac. Rep. 730.

Where two or more suits are commenced under above section, and judgments are obtained against the stockholders in such suits at the same term, and executions are issued thereon during the term or within ten days thereafter, the funds raised thereon, or upon any one of such executions, must be distributed pro rata among all such execution creditors. *Clevenger v. Hansen*, 44 Kan. 182; *s. c.*, 24 Pac. Rep. 61.

Under above section the liability of stockholders to the creditors of a corporation is several and not joint, and each must be sued separately. *Abbey v. Dry Goods Co.*, 41 Kan. 415; *s. c.*, 24 Pac. Rep. 426; *Howell v. Bank*, 52 Kan. 133; *s. c.*, 34 Pac. Rep. 395.]

§ 1205. If any stockholder pay more than his due proportion of any debt of the corporation, he may compel contribution from the other stockholders by action.

See Const., art. XII, § 2, and cross-references.

§ 1206. No stockholder shall be liable to pay debts of the corporation, beyond the amount due on his stock, and an additional amount equal to the stock owned by him.

See Const., art. XII, § 2, and cross-references.

## CHAPTER XXXI.

### Crimes and Punishments.

- Art. 4. Offenses affecting records, currency, written instruments and securities.  
9. Miscellaneous offenses.  
11. General provisions.

#### ARTICLE IV. OFFENSES AFFECTING RECORDS, CURRENCY, WRITTEN INSTRUMENTS AND SECURITIES.

Sec. 2275. Affixing pretended signatures to notes, etc., of corporations.

§ 2275. The false making, forging or counterfeiting of any evidence of debt or negotiable instrument, issued or purporting to have been issued by any corporation having authority for that purpose, to which shall be fixed the pretended signature of any person as an agent or officer of such corporation, shall be deemed a forgery, in the same degree and in the same manner as if such person was at the time an officer or agent of such corporation, notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

See § 1172.

#### ARTICLE IX. MISCELLANEOUS OFFENSES.

- Sec. 2476. Pooling.  
2477. Penalty.  
2478. Misdemeanors.  
2481. Railroad obstructing.  
2482. Conspiracy; railroad.  
2483. Construction.  
2489. Trusts and combinations.  
2500. Corporations.  
2501. All persons.  
2502. Persons injured.  
2503. Actions, defenses.  
2504. Violation.  
2505. County attorney's duty.  
2506. Sheriff's duty.  
2507. District court's duty.  
2508. Repealing clause.

§ 2476. It shall be unlawful for any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, to enter into any agreement, contract or combination with any other grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, for the pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the

earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle, or stock of any kind or nature whatever; and in case of any agreement, contract or combination for such pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle, or stock of any kind or nature whatever, each day of its continuance shall be deemed a separate offense.

Anti-Trust Act. See p. 30.

§ 2477. That in case any grain dealer or dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, shall do or cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall be liable to the person or persons injured thereby, to the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as a part of the costs in the case; and in any such action brought for the recovery of damages the court before whom the same shall be pending may compel any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, or any director, officer, receiver, trustee, agent, employe, or clerk of them or either of them, defendant in such suit, to attend, appear and testify in such case, and may compel the production of the books and papers of such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association party to such suit. The claim that any such testimony or evidence may tend to criminate the person giving such

Pooling; obstruction of railroads; trusts — Stat., §§ 2478, 2481-2483, 2499-2501.

evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person in the trial of any criminal proceeding.

§ 2478. That any grain dealer or grain dealers, partnership, company, or corporation or association of grain dealers, or any other person or persons, partnership, company, corporation, or association subject to the provisions of this act, or any director, officer, or any receiver, trustee, clerk, or lessee or agent, or person acting for or employed by them, or either of them, who alone or with any other partnership, company, corporation, association, person or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter or thing so directed or required by this act to be done, not to be so done, or shall aid or abet such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not exceeding one thousand dollars, or imprisonment in the jail of the county not exceeding six months, or both, in the discretion of the court; and shall moreover be liable to the suit of the party injured or damaged.

§ 2481. If any person or persons shall wilfully and maliciously, by any act or by means of intimidation, impede or obstruct, except by due process of law, the regular operation and conduct of the business of any railroad company, or other corporation, firm or individual in this State, or of the regular running of any locomotive engine, freight or passenger train of any such company, or the labor and business of any such corporation, firm or individual, he or they shall, on conviction thereof, be punished by a fine of not less than twenty dollars, nor more than two hundred dollars, and confined in the county jail not less than twenty days nor more than ninety days.

§ 2482. If two or more persons shall wilfully and maliciously combine or conspire together to obstruct or impede by any act, or by means of intimidation, the regular operation and conduct of the business of any railroad company, or any other corporation, firm or individual in this State, or to obstruct, hinder, or impede, except by due process of law, the regular running of any locomotive engine, freight or passenger train on any railroad, or the labor or business of any such corporation, firm or individual, such persons shall on conviction thereof be punished by fine not less than twenty dollars, nor more than two hundred dollars, and confined in the county jail not less than twenty days nor more than ninety days.

§ 2483. This act shall not be construed to apply to cases of persons voluntarily quitting the employment of any railroad company, or such other corporation, firm or individual, whether by concert or action or otherwise, except as is provided in section one of this act.\*

§ 2499. That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this State, or in the product, manufacture or sale of articles of domestic growth or product of domestic raw material, or for the loan or use of money, or to fix attorney's or doctor's fees, and all arrangements, contracts, agreements, trusts or combinations between persons or corporation designed or which tend to advance reduce or control the price or the cost to producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of money to the borrower, or any other services, are hereby declared to be against public policy, unlawful, and void.

Payment of wages. Act of 1893, at p. 29.

§ 2500. It shall not be lawful for any corporation to issue or to own trust certificates, other than the regularly and lawfully authorized stock thereof, or for any corporation, agent, officer or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

§ 2501. That all persons entering into any such arrangement, contract, agreement, trust, or combination, or who shall, after the passage of this act, attempt to carry out or act under any such arrangement, contract, agreement, trust or combination described in sections one or two of this act, either on his own account or as agent or attorney for another, or as an officer, agent or stockholder of any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not less than one hundred dollars and not more than one thousand dollars, and to imprisonment not less than thirty days and not more than

six months, or to both such fine and imprisonment, in the discretion of the court.

§ 2502. That any person or corporation injured or damaged by any such arrangement, contract, agreement, trust or combination prescribed in sections one or two of this act, may sue for and recover in any court of competent jurisdiction in this State, of any person or corporation, the full consideration or sum paid by him for any goods, wares, merchandise and articles included in or advanced or controlled in price by said combination, or the full amount of money so borrowed.

§ 2503. That when an action at law or suit in equity shall be commenced in any court of this State, it shall be lawful in the defense thereof to plead in bar or in abatement that the plaintiff or any other person interested in the prosecution of the case is a member or agent of an unlawful combination as described in sections one or two of this act, or that the cause of action grows out of such combination, or out of some business or transaction thereof.

§ 2504. That the purchase, sale or manufacture of any goods, wares, merchandise or other commodities in this State by any person or corporation who has entered into any such arrangements, contracts, agreements, trusts or combinations in any other State or territory, as described in sections one or two of this act, for the purchase, sale or manufacture of any such articles by any agent or attorney for such person, or as an agent, officer or stock broker of any such corporation, as a trustee, committee, or in any capacity whatever, shall constitute a violation of this act, and shall subject the offender to the aforesaid liabilities and penalties.

§ 2505. It shall be the duty of the county attorneys to diligently prosecute any and all persons violating any of the provisions of this act in their respective counties. If any county attorney shall fail, neglect or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than ten days nor more than ninety days; and such conviction shall operate as a forfeiture of his office, and the court before whom such conviction may be had shall order and adjudge such forfeiture of office, in addition to the fine imposed as herein provided. And whenever the county attorney shall be unable or shall neglect or refuse to enforce the provisions of this act in his county, or for any reason whatever the provisions of this act shall not be enforced in any county, it shall be the duty of the attorney-general to enforce the same in such county, and for that purpose he may appoint as many assistants as he shall see fit, and he and his assistants shall be authorized to sign, verify and file all such complaints,

informations, petitions and papers, as the county attorney is authorized to sign, verify, or file, and to do and perform any act that the county attorney might lawfully do or perform; and for such services he or his assistants shall receive the same fees that the county attorney would be entitled to for like services, to be taxed and collected in the same manner.

§ 2506. It shall be the duty of all sheriffs, deputy sheriffs, constables, mayors, marshals, police judges and police officers of any city or town, having notice or knowledge of any violation of the provisions of this act, to notify the county attorney of the fact of such violation, and to furnish him the names of any witnesses within his knowledge by whom such violation can be proven. If any such officer shall fail to comply with the provisions of this section he shall upon conviction be fined in any sum not less than one hundred dollars nor more than five hundred dollars; and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

§ 2507. It shall be the duty of the district courts to instruct the grand juries especially as to the provisions of this act.

§ 2508. All laws or parts of laws in conflict with the provisions of this act are hereby repealed.

#### ARTICLE XI. GENERAL PROVISIONS.

Sec. 2588. The term "person," how construed.

§ 2588. When the term "person" is used in this act to designate the party whose property may be the subject of any offense, such term shall be construed to include \* \* \* any \* \* \* private corporation, which may lawfully own any property within this State, as well as individuals.

"Corporation" defined. §§ 1152-1154; Const., art. XII, § 6.

#### CHAPTER LXXX.

##### Procedure — Civil.

Art. 5. The county in which actions are to be brought.

6. Commencement of civil actions.

8. Pleadings in civil actions.

11. Attachment.

13. Receivers.

29. Offices and franchises.

#### ARTICLE V. THE COUNTY IN WHICH ACTIONS ARE TO BE BROUGHT.

Sec. 4128. Where to be brought against a corporation generally.

4129. Against a railroad company, etc.

4130. Against a turnpike company.

4131. Exception.

4132. Against foreign corporation.

§ 4128. An action, other than one of those mentioned in the first three sections of this

Actions, where brought; service of summons — Stat., §§ 4128-4132, 4147-4149.

article,\* against a corporation created by the laws of this State or of the territory of Kansas, may be brought in the county in which it is situated, or has its principal office or place of business, or in which any of the principal officers thereof may reside, or may be summoned; but if such corporation be an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose.

See § 1167, subd. 2, cross-references.

§ 4129. An action against a railroad company, or an owner of a line of mail stages or other coaches, for any injury to persons or property upon the road or line, or upon a liability as a carrier, may be brought in any county through or into which said road or line passes.

[An action may be brought against a foreign railroad corporation in any county of this State where it runs its trains and receives and lands its passengers, for any injury to persons or property upon its road. *Ry. Co. v. Kanaley*, 39 Kan. 1; s. c., 17 Pac. Rep. 324.]

§ 4130. An action, other than one of those mentioned in the first three sections of this article,\* against a turnpike road company, may be brought in any county in which any part of the road lies.

§ 4131. The provisions of this article shall not apply in the case of any corporation created by a law of this State or the territory of Kansas, whose charter prescribes the place where, alone, a suit against such corporation may be brought.

§ 4132. An action, other than one of those mentioned in the first three sections of this article, against a non-resident of this State or a foreign corporation, may be brought in any county in which there may be property of, or debts owing to, said defendant, or where said defendant may be found; but if said defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose.

[If a non-resident corporation appears and submits its case to the court, it is too late to question want of jurisdiction. *R. R. Co. v. Akers*, 4 Kan. 470.]

#### ARTICLE VI. COMMENCEMENT OF CIVIL ACTIONS.

Sec. 4147. How served on corporation generally.

4148. Duty of certain corporations.

4149. The same; service of process upon.

4150. Neglect to designate; how process served.

4151. Service by copy.

4152. On insurance company.

4153. On foreign corporation.

4155. Service by publication.

4156. Affidavit necessary.

§ 4147. A summons against a corporation may be served upon the president, mayor,

chairman of the board of directors, or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof.

See § 4859.

[Where a summons served on a corporation by a wrong name, and the corporation fails to appear and plead the misnomer and suffers judgment to be taken, it is concluded, and in all future litigation may be connected with the action in all proper averments, and when such averments are made and proved, such corporation is affected as though it were properly named therein. *Hoffield v. Board*, 33 Kan. 611; s. c., 7 Pac. Rep. 216.]

When the summons is served on the secretary, return should state that president or other officer was absent from the county, or could not be found. *Town Co. v. Rucker, McJ.*, 147.

Service of a summons on a person who keeps books for a corporation, but who is not its secretary or clerk, or any other officer or agent upon whom a legal service may be made, is not a valid service upon the corporation. *Chambers v. Bridge Co.*, 16 Kan. 270.]

§ 4148. Every railroad company or corporation, and every stage company doing business in the State of Kansas, or having agents doing business therein for such corporation or company, is hereby required to designate some person residing in each county, into which its railroad line or stage route may or does run, or in which its business is transacted, on whom all process and notices issued by any court of record or justices of the peace of such county may be served.

[The service of a summons against a railroad company upon a section foreman, as "a local superintendent of repairs," where it appears that the company has not designated any person upon whom service could be made, under the provisions of section 68 of the Civil Code, is a valid service upon the company. *Ry. Co. v. De Ford*, 38 Kan. 299; s. c., 16 Pac. Rep. 412.]

Summons: copy delivered "to D. W. M., agent of said Ry. Co., Manhattan, Kas.," does not show that said M. was president or chairman of the board of directors, or other chief officer, cashier, clerk or managing agent, and is not good. *Ry. Co. v. Pillsbury*, 29 Kan. 653.]

§ 4149. In every case such railroad company or corporation, and stage company, shall file a certificate of the appointment and designation of such person, in the office of the clerk of the district court of the county in which such person resides; and the service of any process upon the person so designated, in any civil action, shall be deemed and held to be as effectual and complete as if service of such process were made upon the president, or other chief officer of such corporation or stage company. Any railroad company, corporation, or stage company, may revoke the appointment and designation of such person upon whom process may be served, as hereinbefore provided, by appointing any other person qualified as above specified, and filing a certificate of such ap-

\*Actions relating to realty and local actions.

pointment, as aforesaid; but every second or subsequent appointment shall also designate the person whose place is filled by such appointment.

§ 4150. If any railroad or stage company, or corporation, fail to designate and appoint such person, as in the preceding sections is provided and required, such process may be served on any local superintendent of repairs, freight agent, agent to sell tickets, or station keeper, of such company or corporation in such county, or such process may be served by leaving a copy thereof, certified by the officer to whom the same is directed, to be a true copy, at any depot or station of such company or corporation, in such county, with some person in charge thereof, or in the employ of such company or corporation, and such service shall be held and deemed complete and effectual.

[The railway company having designated no person in the county upon whom summons may be served, such service may be made by the sheriff leaving a copy thereof with the person in charge of the depot, and it is not necessary to specify in express terms that the road runs into that county or that company transacts its business therein. *Ry. Co. v. Crowe*, 9 Kan. 496.]

Where a railroad company has not designated any person upon whom service of summons should be made, it may be made upon its section foreman, as "a local superintendent of repairs." *R. R. Co. v. De Ford*, 38 Kan. 299; s. c., 16 Pac. Rep. 442.]

§ 4151. In all cases where service of any process cannot be had upon the person designated by such company or corporation personally, service may be made by leaving a certified copy of such process at the usual place of residence of such person, or as in the last preceding section, and the same shall be deemed complete and effectual.

§ 4152. Where the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

See § 4860.

§ 4153. Where the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent.

See § 4861.

[A corporation for jurisdictional purposes is to be treated as a citizen of the State by whose laws it was created, even though it has no business office in, and none of its officers are in such State. *Pac. R. R. Co. v. M. P. Ry. Co.*, 5 McC. 373.]

§ 4155. Service may be made by publication in either of the following cases: In \* \* \* actions brought against a non-resident of the State, or a foreign corporation, having in this State property or debts owing them, sought to be taken by any of the provisional remedies, or to be appropriated in

any way; in actions which relate to, or the subject of which is, real or personal property in this State, where any defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the State or a foreign corporation; \* \* \*

[Suit being instituted against a foreign corporation, and its treasurer garnished; no funds of said corporation being found in his hands within this State the court acquires no jurisdiction. *Wheat v. Ry. Co.*, 4 Kan. 370.]

§ 4156. (As amended March 10, 1891.) Before service can be made by publication, an affidavit must be filed stating that the defendant or defendants are non-residents of the State of Kansas, and that personal service of summons cannot be had upon said defendant or defendants within the State of Kansas, or that the plaintiff, with due diligence, is unable to make personal service of summons upon the defendant or defendants to be served by publication within the State, and showing that the case is one of those mentioned in the preceding section. When such affidavit is filed, the party may proceed to make service by publication. This act shall apply to domestic corporations which have not been legally dissolved in cases where the officers thereof have departed from the State or cannot be found.

[All that such an affidavit is required to show is, that personal service cannot be made on the defendant within the State, and that the action is one in which service by publication may be had. *Gillespie v. Thomas*, 23 Kan. 139.]

#### ARTICLE VIII. PLEADINGS IN CIVIL ACTIONS.

Sec. 4193. One of several parties may verify; when corporation is a party, who shall verify.

§ 4193. \* \* \* When a municipal or other corporation is a party, the verification may be made by an officer thereof, its agent or attorney.

#### ARTICLE XI. ATTACHMENT.

Sec. 4273. Grounds of attachment.

4291. Answer of corporation summoned as garnishee.

4314. Same.

§ 4273. The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated:

First. When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this State; (but no order of attachment shall be issued on the ground or grounds in this clause stated for any claim other than a debt or demand arising upon contract, judgment or decree, unless the

Receivers; officers and franchises — Stat., §§ 4291, 4314, 4349, 4766, 4768, 4772.

cause of action arose wholly within the limits of this State, which fact must be established on the trial!)

\* \* \* \* \*

See §§ 4874, 4884, as to attachments before justices.

§ 4291. The answer of a corporation summoned as a garnishee may be made by any officer thereof; and of any other garnishee, by any agent or attorney, in his behalf, who shall be acquainted with the facts.

§ 4314. When any corporation shall be notified to appear and answer as garnishee of any defendant, pursuant to sections 200, 201 and 202, of said chapter 80,\* the answer, required to be made by such garnishee by section 215 of said chapter, shall not be required in any case in less than fifteen days from the service of the order and notice, and interrogatories, if any; and when neither the president or other head of such corporation, nor the secretary, cashier, or managing agent thereof, shall reside or live, or keep his office or place of business in the county when (where) the action is pending, the answer of such garnishee shall not be required in less than thirty days from the service of the order and notice, and interrogatories, if any.

#### ARTICLE XXIII. RECEIVERS.

Sec. 4349. Appointment of receiver.

§ 4349. A receiver may be appointed by the supreme court, the district court, or any judge of either, or in the absence of said judges from the county, by the probate judge:

\* \* \* \* \*

Fifth. In the case provided in this Code, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

Sixth. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity.

See § 1202.

[Under fifth subdivision of above section, a receiver may be appointed at suit of a stockholder, where corporate affairs have been so mismanaged that it has become insolvent, and it appears that all the officers and directors have conspired to divert its business to another company, distribute its funds, and fraudulently apply its assets to their individual benefit. In re Lewis, 52 Kan. 660; s. c., 35 Pac. Rep. 287.]

#### ARTICLE XXIX. OFFICES AND FRANCHISES.

Sec. 4766. Writ of quo warranto abolished.

4767. In what cases.

4768. In what name.

4772. Damages; ouster.

4773. Costs.

§ 4766. The writ of quo warranto, and proceedings by information in the nature of

quo warranto, are abolished, and the remedies heretofore obtainable in those forms may be had by civil action.

§ 4767. Such action may be brought in the supreme court or in the district court, in the following cases:

First. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or shall claim any franchise within this State, or any office in any corporation created by authority of this State;

Second. Whenever any public officer shall have done or suffered any act which, by the provisions of the law, shall work a forfeiture of his office;

Third. When any association or number of persons shall act within this State as a corporation without being legally incorporated;

Fourth. When any corporation do or omit acts which amount to a surrender or a forfeiture of their rights and privileges as a corporation, or when any corporation abuses its power or exercises powers not conferred by law;

Fifth. Where any corporation claims, by virtue of a congressional grant, any of the public lands or Indian lands to which the Indian title or right of occupancy has been extinguished;

Sixth. For any other cause for which a remedy might have been heretofore obtained by writ of quo warranto, or information in the nature of quo warranto.

[Judgment of dissolution can probably be rendered only in an action in the nature of a quo warranto, but it may be rendered in any case for a long-continued, wilful and persistent misuser or non-user of corporate franchises. State v. Pipher, 28 Kan. 131.]

The State may proceed by civil action in quo warranto against any corporation created under the laws of the State which, without authority, assumes to carry on the business of insurance. State v. Ins. Co., 30 Kan. 585; s. c., 2 Pac. Rep. 840.]

§ 4768. When the action is brought by the attorney-general or the county attorney of any county of his own motion, or when directed to do so by competent authority, it shall be prosecuted in the name of the State, but where the action is brought by a person claiming an interest in the office, franchise or corporation, or claiming any interest adverse to the franchise, gift or grant, which is the subject of the action, it shall be prosecuted in the name and under the direction, and at the expense of such person: \* \* \*

[In mandamus or quo warranto, an individual person can no longer sue in the name of the State, but must prosecute his action in his own name. Crowell v. Ward, 16 Kan. 61.]

§ 4772. When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the action, have a separate action for the damages at any time within one year after the judgment. The court may give judgment of ouster against the defendant, and exclude him from the

\*Provisions relating to garnishees. §§ 4283, 4302. § 202 has been repealed.

Actions before justices — Stat., §§ 4773, 4859-4861, 4874, 4884, 4934, 5279.

office, franchise or corporate rights; and in case of corporations, that the same shall be dissolved.

§ 4773. If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the court may cause the costs to be collected by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and may restrain any disposition of the effects of the corporation, appoint a receiver of its property and effects, take an account, and make a distribution thereof among the creditors and persons entitled.

## CHAPTER LXXXI.

### Procedure — Civil, Before Justices.

Art. 2. Commencement of an action.  
4. Attachment.  
8. Trial.

## ARTICLE II. COMMENCEMENT OF AN ACTION.

Sec. 4859. Service of summons on corporations.  
4860. On insurance company.  
4861. On foreign corporations.

§ 4859. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof.

See § 4147.

[A service of summons upon a corporation which does not show that person served was either president, chairman of board of directors, or other chief officer, clerk or managing agent, is not good. *R. R. Co. v. Pillsbury*, 29 Kan. 653.]

§ 4860. When the defendant is an incorporated insurance company, and the action is brought in the county in which there is an agency thereof, the service may be upon the chief officer of such agency.

See § 4152.

§ 4861. When the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent.

See § 4153.

## ARTICLE IV. ATTACHMENT.

Sec. 4874. Affidavit, and grounds for.  
4884. Service of.

§ 4874. The plaintiff in a civil action for the recovery of money may, at or after the

commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated:

First. When the defendant or one of several defendants is a foreign corporation or non-resident of this State; (but no attachment shall be granted on the ground or grounds in this clause stated, for any claim other than a debt or demand arising upon contract, judgment or decree, unless the cause of action arose wholly within the limits of this State, which fact must be established on the trial);

\* \* \* \* \*

See §§ 4273 et seq.

§ 4884. The copy of the order and notice shall be served upon the garnishee as follows: \* \* \* if a corporation, they shall be left with the president or other head of the same, or the secretary, cashier or managing agent thereof.

## ARTICLE VIII. TRIAL.

Sec. 4934. Denial of corporate existence.

§ 4934. In all actions, allegations \* \* \* of the existence of a corporation \* \* \* shall be taken as true unless the denial of the same be verified by the affidavit of the opposite party, his agent or attorney.

Proof of corporate existence. §§ 1166, 5279.

[In a justice's court the existence of a corporation may be put in issue by the defendant without a denial under oath, or even a written denial of any kind. *Stanley v. Bank*, 17 Kan. 592.

It was sufficiently shown, in case at bar, that the National Bank of Springfield, Ohio, was a corporation. *Mann v. Bank*, 34 Kan. 746; s. c., 10 Pac. Rep. 150.

When the answer denying the allegation of corporate existence is verified, it must be proved upon the trial; and it is error, with such an answer in the case, to render judgment against the corporation without any proof of its corporate existence. *Jones v. Ross*, 48 Kan. 474; s. c., 29 Pac. Rep. 680.]

## CHAPTER LXXXII.

### Procedure — Criminal.

Art. 11. Trials, Incidents thereto.

## ARTICLE XI. TRIALS, INCIDENTS THERETO.

Sec. 5279. Existence of corporation, how proved.

§ 5279. If, on trial or other proceeding in a criminal cause, the existence, constitution, or powers of any banking company or corporation shall become material, or be in any way drawn in question, it shall not be necessary to produce a certified copy of the charter or act of incorporation, but the same may be proved by general reputation, or by the printed statute book of the State, govern-



## Taxation — Stat., 6846, 6847, 6849, 6850, 6858, 6864, 6865.

ment or country by which such corporation was created.

Proof of corporate existence. § 1166. See § 4934.

[In the trial of a criminal case, the de facto existence of a corporation is all that is necessary to be shown; and existence of a railroad corporation may be proved by general reputation. *State v. Thompson*, 23 Kan. 338.]

## CHAPTER CVII.

## Taxation.

- Art. 1. Property subject to taxation.  
3. Property, when and by whom listed.  
5. Merchants and manufacturers.  
6. Banks.

## ARTICLE I. PROPERTY SUBJECT TO TAXATION.

- Sec. 6846. Property subject to taxation.  
6847. Personal property includes what.

§ 6846. All property in this State, real and personal, not expressly exempt therefrom, shall be subject to taxation in the manner prescribed by this act.

§ 6847. \* \* \* The term "personal property" shall include \* \* \* the capital stock, undivided profits, and all other assets of every company, incorporated or unincorporated, and every share or interest in such stock, profit or assets, by whatever name the same may be designated: Provided, The same is not included in other personal property subject to taxation or listed as the property of individuals; \* \* \*

Stock is personal estate. § 1184.

## ARTICLE III. PROPERTY, WHEN AND BY WHOM LISTED.

- Sec. 6849. What property to be listed. By whom.  
6850. Money.  
6858. Corporate stock.

§ 6849. Every person of full age and sound mind, accountant officer, or other person designated by any person, company or corporation, shall list all personal property subject to taxation, of which such person, company or corporation is the owner, lessee or occupant, having any interest in or exercising any control over any personal property, including all moneys in his possession or subject to his order, check or draft, and all credits due or to become due from any person, company or corporation, whether in or out of the county or State in which such person may reside or such company be located, except as herein otherwise provided.

[Where the stock in a mining corporation is assessed to the stockholders for the respective shares held by them, the assessment of the tangible property of the corporation, and the payment of the taxes delivered thereon does not relieve the stockholders from liability to pay taxes on the excess of the valuation of the entire stock over

the valuation of the tangible property of the corporation. *Ryan v. Leavenworth*, 30 Kan. 185; s. c., 2 Pac. Rep. 156.]

§ 6850. Money collected by any agent for any person, company or corporation, which is to be transmitted immediately to such person, company or corporation, shall not be listed by such agent; but such agent shall, if required by the assessor, state under oath the amount of money in his hands, and to whom the same is to be transmitted.

§ 6858. No person shall be required to include in the list of personal property any portion of the capital stock of any company or corporation which is required to be listed by such company or corporation; but all incorporated companies, except banks and banking associations, manufacturing companies and stock-yard companies, shall be required to list by their designated listing agent, in the township or city where the principal office of such company is kept, the full amount of stock paid in and remaining as capital stock, at its true value in money, and such stock shall be taxed as other personal property: Provided, That such amount of stock of such companies as may be invested in real or personal property in the State of Kansas, which at the time of listing said capital stock shall be particularly specified and given to the assessors for taxation, shall be deducted from the amount of said capital stock.

## ARTICLE V. MERCHANTS AND MANUFACTURERS.

- Sec. 6864. Report to county clerk.  
6865. Failure; forfeiture.  
6866. Manufacturer defined.  
6867. Manufacturer shall list what.

§ 6864. Every person, company or corporation, who shall commence merchandising, trading or freighting in any town, city or village in this State, after the first day of March and before the first day of November in any year and the value of whose personal property, so employed, shall not have been listed for taxation in any other county in this State, shall report, under oath, to the clerk of the county in which such person, company or corporation is engaged in business, the probable amount of the average value of personal property intended by such person, company, or corporation to be so employed; and such amount shall be entered by said clerk on the assessment-roll of the county in which such business may be carried on, and such property shall be taxed the same as if the same had been returned by the proper assessor.

§ 6865. If any person, company or corporation shall commence merchandising, trading or freighting, as designated in the foregoing section, and shall not, within one month thereafter, report in accordance with the requirements of section 16 of this act, such person, company or corporation shall forfeit

and pay four per cent. on the value of the personal property by him or them so employed; and the value of such property shall be ascertained by the testimony of witnesses called by the the treasurer of the county in which such business may be carried on. And the said forfeitures shall be collected by such treasurer; by a suit before any justice of the peace or court having jurisdiction thereof; and when such forfeiture shall be collected, the amount shall be distributed in the same proportion as other taxes: Provided, It shall be the duty of said treasurer to notify such merchant of the above requirement of law, at least ten days before the commencement of such suit.

§ 6866. Every person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof, by any process of manufacturing, refining, or by the combination of different materials, shall be held to be a manufacturer, and when such company or corporation shall be required to make out a statement of other personal property for taxation, he or they shall state the average amount of all articles purchased or held for the purpose of being used in such process of manufacturing, refining or combining which he or they shall have had on hand during the year next preceding the first day of March preceding the time of making such statement, which amount shall be ascertained by estimating the amount of such property on hand in each month of the preceding year, or such portion thereof as he or they may have been engaged in such business, then add the several monthly estimates, and divide the aggregate by the number of months he or they have been engaged in such business, and such statement shall be verified on oath, as required in other cases: Provided, That the property so listed shall not be valued or assessed at any higher rate than other property.

§ 6867. Every manufacturer shall list the value of all engines, tools and machinery of every description, not forming part of any parcel of the real property, used or designated to be used in any process of manufacturing as defined in this act.

#### ARTICLE VI. BANKS.

Sec. 6868. Stock in banks, how assessed.

§ 6868. (As amended March 19, 1891.) Stockholders in banks and banking associations and loan and investment companies organized under the laws of this State or the United States, shall be assessed and taxed on the true value of their shares of stock in the city or township where such banks, banking associations, loan or investment companies are located; and the president, cashier or other managing officer thereof, shall, under oath, return to the assessor on demand a list of the names of the stockholders and amount and value of stock held by each, together with the value of any undivided profit or surplus; and said banks, banking associations, loan or investment companies shall pay the tax assessed upon said stock and undivided profits or surplus, and shall have a lien thereon until the same is satisfied: Provided, That if from any causes the taxes levied upon the stock of any banking association, loan or investment company shall not be paid by said corporation, the property of the individual stockholders shall be held liable therefor: Provided further, That if any portion of the capital stock of any bank or banking association or loan or investment company shall be invested in real estate and said corporation shall hold a title in fee simple thereto, the assessed value of said real estate shall be deducted from the original assessment of the paid-up capital stock of said corporation, and said real estate shall be assessed as other lands or lots: And provided further, That banking stock or loan and investment company stock or capital shall not be assessed at any higher rate than other property: And provided further, That the provisions of this act shall apply to all mutual fire and life insurance companies or associations having assets, accumulations, moneys or credits, and doing business under the laws of this State: And provided further, That such assets, money and credits, held and under the control of such mutual fire and life insurance companies or associations, shall be subject to assessment and taxation.

Wages; preferred stock, etc. — Acts Mch. 10, 1893; Mch. 9, 1895; Feb. 18, 1897.

## LEGISLATIVE ACTS RELATING TO CORPORATIONS, ENACTED SUBSEQUENTLY TO 1889.

1. Providing for the weekly payment of wages.
2. Authorizing corporations to issue preferred stock.
3. Discrimination against labor organizations.
4. To secure to laborers payment of their wages.
5. Prohibiting trusts.
6. Allowing corporations to become members of insurance companies.
7. To prevent black-listing.
8. Relating to employment of detectives.

### Act 1.

AN ACT providing for the weekly payment of wages in lawful money of the United States by certain corporations, and providing a penalty for the violation thereof.

Be it enacted by the legislature of the State of Kansas:

Section 1. All private corporations doing business within this State, except all steam surface railways and except corporations engaged in the production of farm and dairy products, shall pay to their employes the wages earned each and every week in lawful money of the United States, and all such wages shall be due and payable and shall be paid by such corporation not later than Friday of each week for all such wages earned the preceding week.

§ 2. Whenever such corporation fails to pay any of their employes, as provided in section one of this act, then a penalty shall attach to such corporation and become due to such employes, as follows: A sum equivalent to a penalty of five per cent. per month as liquidated damages, and such penalty shall attach and become a judgment in any court of competent jurisdiction, and the penalty shall continue in full force and effect including all the time intervening up to time of final payment.

§ 3. Whenever any employe is discharged from the employ of any such corporation, then the wages of such employe shall become due and payable in the same manner as heretofore described in section two.

§ 4. Any employe may recover all such penalties that may, by violations of sections two and three of this act, have accrued to him at any time within six months succeeding such default or delay in the payment of such wages.

§ 5. Any contract or agreement made between any such corporation and any parties in its employ, whose provisions shall be in violation, evasion or circumvention of this act, shall be unlawful and void in its effects as to such corporations.

§ 6. Whenever any such corporation shall contract any or all its work to any contrac-

tor, then it shall become the duty of such corporation to provide that the employes of such corporation or contractor shall be paid according to the provisions of this act, and such corporation shall become responsible and liable to the employes of such contractor in the same manner as if said employes were employed by such corporation.

§ 7. Whenever it shall become necessary for employes to enter or maintain a suit at law for the recovery or collection of wages due as provided by this act, then such judgment shall include a reasonable attorney fee, to be taxed as a part of the costs in the case, and collected under the same provisions of law as such judgment.

§ 8. This act shall take effect and be in force from and after its publication in the official State paper.

(Approved March 10, 1893.)

### Act 2.

AN ACT authorizing corporations to issue preferred stock.

Be it enacted by the legislature of the State of Kansas:

Section 1. It shall be lawful for any corporation now organized or that may be hereafter organized under and by virtue of the laws of the territory of Kansas or the State of Kansas to issue preferred stock: Provided, All the stockholders of any corporation so issuing preferred stock shall give their assent to such issue.

§ 2. This act shall take effect and be in force from and after its publication in the official State paper.

(Approved March 9, 1895.)

### Act 3.

AN ACT to prevent the discrimination of corporations or individuals against members of labor organizations, and providing penalties for the violation of this act.

Be it enacted by the legislature of the State of Kansas:

Section 1. That it shall be unlawful for any person, company, or corporation, or the agent, officer, manager, superintendent, master mechanic, or foreman of any person, company, or corporation, to prevent employes from joining and belonging to any labor organization, and any such person, company, or corporation, or any agent, manager, superintendent, master mechanic, or other officer of any person, company, or

## Wages; trusts — Acts of March 2, 1897; March 8, 1897.

corporation that coerces or attempts to coerce employes by discharging or threatening to discharge said employes because of their connection with such labor organization, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than five hundred dollars.

§ 2. That any person, company, or corporation doing any of the acts prohibited by section one of this act, shall be liable to the person injured, in exemplary or punitive damages not to exceed two thousand dollars, to be recovered by civil action, and in addition thereto a reasonable attorney fee to be recovered in said civil action for damages.

§ 3. This act shall take effect and be in force from and after its publication in the statute book.

(Approved February 18, 1897.)

## Act 4.

AN ACT to secure to laborers and others the payment of their wages, and prescribing a penalty for a violation of this act, and repealing sections 2441, 2442, and 2443 of the general statutes of 1889, and all acts and parts of acts in conflict herewith.

Be it enacted by the legislature of the State of Kansas:

Section 1. It shall be unlawful for any person, firm, company, corporation, or trust, or the agent, or the business manager of any such person, firm, company, corporation or trust to sell, give, deliver, or in any way directly or indirectly to any person employed by him or it, in payment of wages due or to become due, any scrip, token, check, draft, order, credit on any book of account or other evidence of indebtedness, payable to bearer or his assignee, otherwise than at the date of issue, but such wages shall be paid only in lawful money of the United States, or by check or draft drawn upon some bank in which any person, firm, company, corporation, or trust, or the agent, or the business manager of any such person, firm, company, corporation, or trust, has money upon deposit to cash the same.

§ 2. All contracts to pay or accept wages in any other than lawful money, or by check or draft, as specified in section one, of this act, and any private agreement or secret understanding that wages shall be or may be paid, in other than lawful money, or by such check or draft, shall be void, and the procurement of such private agreement or secret understanding, shall be unlawful and construed as coercion on the part of the employer.

§ 3. If any person shall violate any of the provisions of either section one or two of this act, or shall compel, or in any man-

ner attempt to compel, or coerce any employe of any corporation, or trust to purchase goods, or supplies, from any particular person, firm, corporation, company or trust or at any particular store or place, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty or more than ninety days, or by both such fine and imprisonment for each violation.

§ 4. This act shall apply only to corporations or trusts or their agents, lessees, or business managers, that employ ten or more persons.

§ 5. The county attorney of any county upon complaint made to him shall proceed to prosecute the violators of this act as prescribed in other cases of misdemeanor.

§ 6. That sections 2441, 2442, and 2443 of the general statutes of Kansas, of 1889, and all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 7. This act shall take effect and be in force from and after its publication in the official State paper.

(Approved March 2, 1897.)

## Act 5.

AN ACT defining and prohibiting trusts, providing procedure to enforce the provisions of this act, and providing penalties for violations of the provisions of this act.

Be it enacted by the legislature of the State of Kansas:

Section 1. A trust is a combination of capital, skill, or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes: First. To create or carry out restrictions in trade or commerce or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State. Second. To increase or reduce the price of merchandise, produce or commodities, or to control the cost or rates of insurance. Third. To prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce. Fourth. To fix any standard or figure, whereby its price to the public shall be, in any manner, controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State. Fifth. To make or enter into, or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or

## Trusts — Act of March 8, 1897.

article of trade, use, merchandise, commerce or consumption below a common standard figure or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the manufacture, sale or transportation of any such article or commodity, that its price may in any manner be affected. And any such combinations are hereby declared to be against public policy, unlawful and void.

§ 2. All persons, companies, or corporations, within this State are hereby denied the right to form or to be in any manner interested, either directly or indirectly, as principal, agent, representative, consignee or otherwise in any trust as defined in section one of this act.

§ 3. Any corporation, holding a charter under the laws of the State of Kansas which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine. And any stockholder, director, officer, agent, representative or consignee of any such corporations shall be subject to the penalties herein prescribed.

§ 4. For a violation of any of the provisions of this act by any corporation, or any of its officers or agents mentioned herein, it shall be the duty of the attorney-general of the State, or county attorney of any county in which said violation may occur, or either of them, upon his own motion, to institute an action in any court in this State, having jurisdiction thereof, for the forfeiture of the charter, rights and franchise of such corporation, and the dissolution of its corporate existence.

§ 5. Every person, company or corporation within or without this State, their officers, agents, representatives or consignees, violating any of the provisions of this act, within this State, are hereby denied the right, and are hereby prohibited from doing any business within this State, and all persons, companies and corporations, their officers, agents, representatives and consignees within this State are hereby denied the right to handle the goods of, or in any manner deal with, directly or indirectly, any such person, company or corporation, their officers, agents, representatives or consignees, and it shall be the duty of the attorney-general, and the county attorney of any county in the State where any violation of this act be committed, or either of them, to enforce the provisions of this section by

injunction or other proceeding; and all persons, companies and corporations, their officers, agents, representatives or consignees, violating any of the provisions of this section, either directly or indirectly, or of abetting or aiding either directly or indirectly in any violation of any provisions of this section, shall be deemed guilty of a misdemeanor and shall be fined, not less than one hundred dollars nor more than one thousand dollars, and confined in jail not less than thirty days, nor more than six months, and shall forfeit not less than one hundred dollars for each and every day such violation may continue, which may be recovered in the name of the State of Kansas in any court of competent jurisdiction.

§ 6. Each and every person, company or corporation, their officers, agents, representatives or consignees, who, either directly or indirectly, violate any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, and shall be imprisoned not less than thirty days nor more than six months, and in addition thereto for each and every day thereafter that such violation shall be committed or continued, forfeit and pay the sum of one hundred dollars, which may be recovered in the name of the State of Kansas, in any county where the offense is committed or where either of the offenders reside, and it shall be the duty of the attorney-general of the State, or the county attorney of any county in the State, in which said violation shall occur, or either of them, to prosecute and enforce the provisions of this act.

§ 7. Any contract or agreement in violation of any of the provisions of this act, shall be absolutely void and not enforceable in any of the courts of this State, and when any civil action shall be commenced in any court of this State, it shall be lawful to plead in the defense thereof, that the plaintiff or any person interested in the prosecution of the case is at the time or has within one year next preceding the date of the commencement of any such action, been guilty either as principal, agent, representative, or consignee, directly or indirectly, of a violation of any of the provisions of this act, or that the cause of action grows out of any business transaction in violation of this act.

§ 8. That any person, firm, company or corporation that may be damaged by any such agreement, trusts or combinations described in sections one and two of this act, may sue for and recover in any court of competent jurisdiction in this State, of any person, company or combination, operating such trust or combination, such damages as they have sustained, together with a reasonable attorney fee.

§ 9. It shall be the duty of the attorney-

Trusts; blacklisting — Acts of March 8, 1897; March 12, 1897.

general of the State, and the county attorneys in their respective counties to diligently prosecute any and all persons violating any of the provisions of this act, and it shall be the duty of all State and county officials having notice and knowledge of any violation of the provisions of this act, to notify the county attorney of their respective counties, and the attorney-general of the State, of the fact of such violation and to furnish them with the names of any witnesses by whom such violations can be proved; if any such officer or officers shall fail to comply with the provisions of this section he shall upon conviction, be fined in any sum not less than one hundred dollars nor more than one thousand dollars, and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had, shall in addition to the impositions of the fine aforesaid, order and adjudge the forfeiture of his said office.

§ 10. The several district courts of this State, and the judges thereof shall have jurisdiction, and it shall be their duty, upon good cause shown and upon written application of the county attorney or the attorney-general, to cause to be issued by the clerk of said court, subpoenas for such witnesses as may be named in the application of a county attorney or the attorney-general, and to cause the same to be served by the sheriff of the county where such subpoena is issued; and such witnesses shall be compelled to appear before such court, or judge, at the time and place set forth in the subpoena, and shall be compelled to testify as to any knowledge they may have of the violations of any of the provisions of this act. And any witness who fails or refuses to attend and testify shall be punished as for contempt, as provided by law. Any person subpoenaed and examined shall not be liable to criminal prosecution for any violation of this act about which he may testify. Neither shall the evidence of any such witness be used against him in any criminal proceeding. The evidence of all witnesses so subpoenaed shall be taken down by the reporter of said court and shall be transcribed and placed in the hands of the county attorney or the attorney-general, and he shall, in the proper courts, at once prosecute such violator or violators of this act as the testimony so taken shall disclose. Witnesses subpoenaed as provided for in this section shall be compelled to attend from any county in the State.

§ 11. Nothing in this chapter shall be held or construed to affect any action or prosecution which is now pending under the provisions of any law now in existence in this State.

§ 12. This act shall take effect and be in force from and after its publication in the official State paper.

(Approved March 8, 1897.)

#### Act 6.

AN ACT to allow public corporations, quasi-public corporations and private corporations of the State of Kansas to become members of mutual fire insurance companies for the purpose of carrying insurance in such companies.

Be it enacted by the legislature of the State of Kansas:

Section 1. That any public corporation, quasi-public corporation, or private corporation of the State of Kansas has power to be a member of a mutual fire insurance company and vote as such member and to execute premium notes for its insurance.

§ 2. That any corporation or quasi-corporation may vote by any one of its officers at the annual meetings of mutual fire insurance companies of which it is a member.

§ 3. This act shall take effect and be in force from and after its publication in the official State paper.

(Approved March 12, 1897.)

#### Act 7.

AN ACT to prevent blacklisting by employers of labor, providing penalties therefor, and for the recovery of damages.

Be it enacted by the legislature of the State of Kansas:

Section 1. Any employer of labor in this State, after having discharged any person from his service, shall not prevent or attempt to prevent by word, sign or writing of any kind whatsoever, any such discharged employe from obtaining employment from any other person, company or corporation except by furnishing, in writing, on request, the cause of such discharge.

§ 2. That any employer of labor in this State shall, upon the request of a discharged employe, furnish, in writing, the true cause or reason for such discharge.

§ 3. Any employer of labor, his agent or employe who shall violate the provisions of this act shall be guilty of a misdemeanor and shall, upon conviction, be fined for each offense the sum of one hundred dollars and thirty days imprisonment in the county jail.

§ 4. Any person, firm, or corporation, found guilty of the violation of sections one and two of this act, shall be liable to the party injured to an amount equal to three times the sum he may be injured, and such employers of labor shall also be liable for a reasonable attorney fee which shall be taxed as part of the costs in the case.

§ 5. This act to be in full force and effect from and after its publication in the statute book.

(Approved March 12, 1897.)

## Special policemen — Act of March 13, 1897.

## Act 8.

AN ACT relating to the appointment of special deputies or policemen by sheriffs, mayors and other persons authorized by law to make such appointments, and providing penalties for violation thereof.

Be it enacted by the legislature of the State of Kansas:

Section 1. That no sheriff of a county, mayor of a city, or other private persons authorized by law to appoint special deputies, marshals or policemen in this State, to preserve the public peace and prevent and quell public disturbances, shall hereafter appoint as such special deputies, marshals or policemen any person who is not a resident of this State.

§ 2. That it shall be unlawful for any person, company or association or corporation to bring or import into this State any person or persons or association of persons for the purpose of discharging the duties devolving upon sheriffs, deputy sheriffs, policemen, constables or peace officers in the protection or preservation of public or private property, or in the punishment of any person violating the criminal laws of this State.

§ 3. That any person or persons who shall in this State, without the authority, exercise or attempt to exercise the functions

of or hold himself or themselves out to any as a deputy sheriff, marshal, policeman, constable or peace officer, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment for a period of not less than three months nor more than one year.

§ 4. That any person, company or corporation guilty of violating any of the provisions of said section two of this act shall be liable to a penalty of ten thousand dollars, to be recovered in the name of the State, for the use of the school fund of the county where such private armed detective forces were used by such corporation or persons; and the person, officer or agent employing such private detectives shall be guilty of felony, and on conviction thereof, shall be punished by imprisonment at hard labor not exceeding five years and not less than one year, and every day that private armed detective forces are employed or used shall be considered a separate and distinct offense: Provided, however, That nothing contained in this act shall prevent the governor of this State from appointing a citizen of another State to serve a warrant issued on a requisition from the governor of another State.

§ 5. That this act shall take effect and be in force from and after its publication in the statute books.

(Approved March 13, 1897.)





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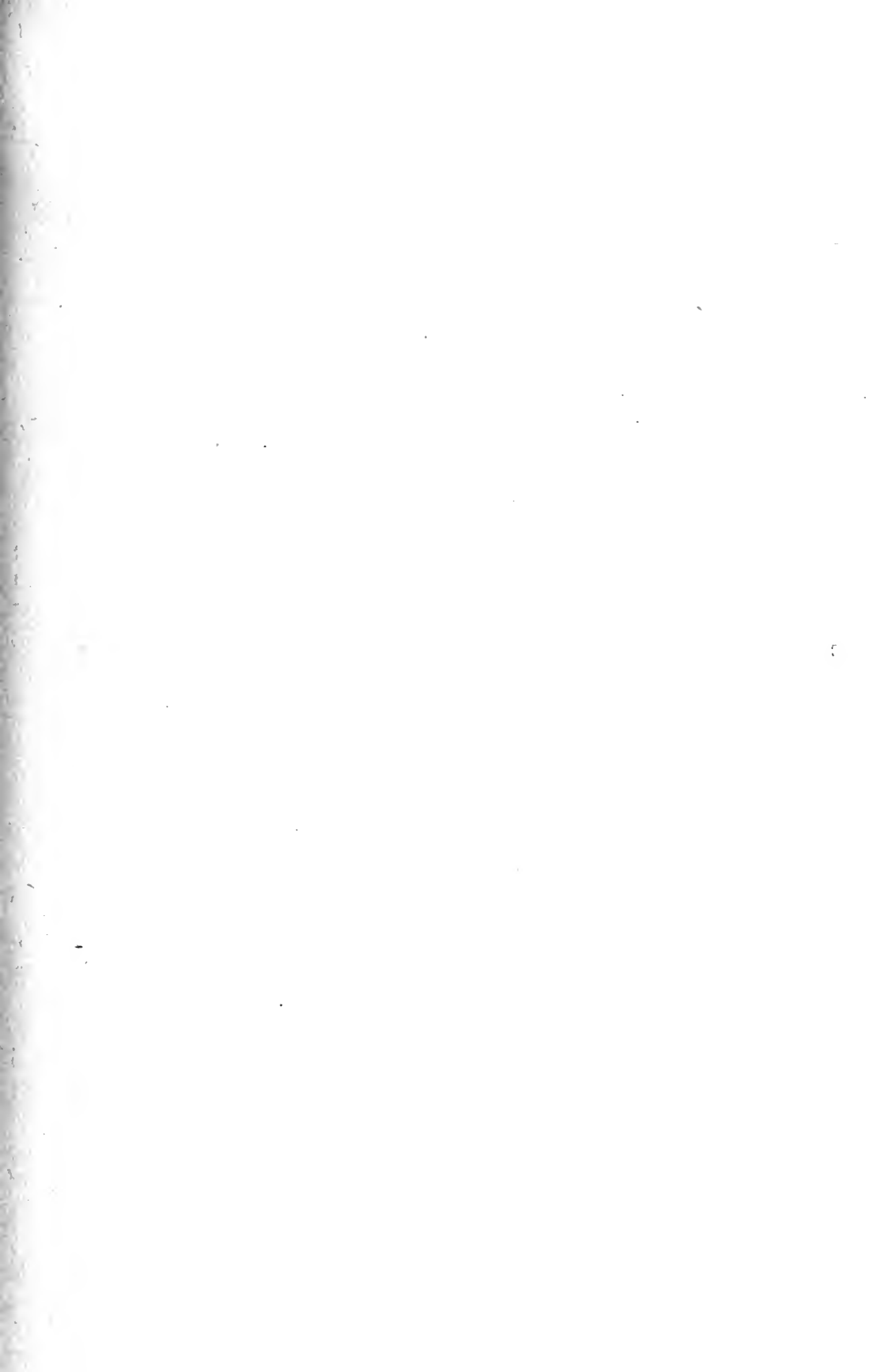
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KENTUCKY.

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# KENTUCKY.

## CONSTITUTION OF KENTUCKY -- 1891.

### PROVISIONS RELATING TO CORPORATIONS.

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- Sec. 3. Grant of exclusive privileges. Amendment of charter.
13. Private property not to be taken without compensation.
19. Ex post facto, or law impairing contracts, forbidden.

#### Suffrage and Elections.

- Sec. 150. Penalty upon corporation guilty of bribery.

#### Revenue and Taxation.

- Sec. 174. Taxation of property of corporations.

#### Corporations.

- Sec. 190. Constitution to be accepted by corporation.
191. Charters granted prior to Constitution; forfeiture of.
192. Business unauthorized by charter prohibited; real value.
193. Stocks or bonds not to be issued unless for value.
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195. Right of eminent domain retained by State.
196. Transportation; charge for; common-law liability.
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199. Telegraph and telephone companies.
200. Domestic corporation does not become foreign by consolidation with.
201. Common carrier not to consolidate with or purchase parallel line; contracts between; when forbidden.
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203. Sale or lease of franchise does not affect existing liabilities.
204. Bank; penalty for officer of insolvent, receiving deposits.
205. Forfeiture of charters of corporations guilty of abuses of power.
206. Elevators; warehouses; subject to legislative control; inspection.
207. Directors; election of; votes that stockholder may cast.
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#### General Provisions.

- Sec. 241. Negligent injury resulting in death; action for.
242. Private property; taking of, for public purposes; appeal; trial by jury.
244. Wage-earners to be paid in lawful money.

§ 3. \* \* \* No grant of exclusive, separate public emoluments or privileges shall

be made to any man or set of men, except in consideration of public services; but no property shall be exempt from taxation except as provided in this Constitution; and every grant of a franchise, privilege or exemption, shall remain subject to revocation, alteration or amendment.

See Const., § 19; Statutes, §§ 559, 570, 4077 et seq., and notes.

[Grants of franchises are to be strictly construed in favor of the public. *Maddox v. Graham*, 2 Met. 72; *R. R. Co. v. Warren Co. Ct.*, 10 Bush, 724.

An act conferring upon a corporation the power to sell land in the foreclosure of mortgages, without the intervention of a court, the company having performed no public service to the State, is unconstitutional and void. *Trust Co. v. Lewis*, 82 Ky. 579. It is class legislation. *Id.*

Charter immunity from taxation is not a vested right. *Bank v. Daviess*, 39 S. W. Rep. 1039.]

§ 13. \* \* \* Nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

See Const., §§ 242, 195.

§ 19. No ex post facto law, nor any law impairing the obligation of contracts, shall be enacted.

See Const., § 3. Amendment of articles of incorporation. Statutes, § 559, and note; § 1987.

[Act of incorporation a contract within meaning of Constitution, and laws impairing the obligation of such contract are unconstitutional, when right to amend is not reserved. *Hamilton v. Keith*, 5 Bush, 461; *Slack v. R. R. Co.*, 13 B. M. 25.

Right conferred by charter cannot be divested by subsequent legislation; but when such right is claimed by construction merely, and legislature has passed an act inconsistent with the right so claimed, a construction should not be given which would produce a conflict unless imperatively demanded by the scope and design of the charter. *M. T. Co. v. How*, 14 B. M. 432. Legislature may control and modify remedies given to corporations to same extent it has in other cases, if no vested right be encroached upon nor obligation of contract be impaired. *Howard v. Ins. Co.*, 13 B. M. 285.

Legislature may create corporations, and, in consideration of their assuming liabilities and duties, grant them rights and privileges that can-

not afterward, without consent, be impaired or diminished. *R. R. Co. v. Comm.*, 10 Bush, 47; *Covington v. Bridge Co.*, *Id.* 76.

A contract arising out of the passage and acceptance of a charter invests the corporation with an absolute right of property and confers such authority as vests the corporation with such interests as are of appreciable value. *R. R. Co. v. Kinner*, 81 Ky. 221. But a special remedy given to a railway company for the condemnation of real estate contains no element of a contract and may be repealed. *Id.*

A right to amend charter of a private corporation does not reserve to the general assembly the power to take away from corporators the control of the corporate property. *Orr v. Bracken Co. Ct.*, 81 Ky. 593. Nor alter the right to select officers under the charter. *Id.*

Provision of charter releasing a corporation from payment of taxes constitutes a binding contract, from which State cannot recede without consent of the corporation, unless power to alter or amend is expressly reserved in the charter or in a general law in force at the time. *Franklin Co. Ct. v. Bank*, 87 Ky. 370; *s. c.*, 9 S. W. Rep. 212.

§ 150. \* \* \* If any corporation shall, directly or indirectly, offer, promise or give, or shall authorize, directly or indirectly, any person to offer, promise or give any money or anything of value to influence the result of any election in this State, or the vote of any voter authorized to vote therein, or who shall afterward reimburse or compensate, in any manner whatever, any person who shall have offered, promised or given any money or other thing of value to influence the result of any election or the vote of any such voter, such corporation, if organized under the laws of this commonwealth, shall, on conviction thereof, forfeit its charter and all rights, privileges and immunities thereunder; and if chartered by another State and doing business in this State, whether by license, or upon mere sufferance, such corporation upon conviction of either of the offenses aforesaid, shall forfeit all right to carry on any business in this State; and it shall be the duty of the general assembly to provide for the enforcement of the provisions of this section. \* \* \*

§ 174. All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by the Constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this Constitution shall be construed to prevent the general assembly from providing for taxation based on income, licenses or franchises.

See §§ 4077-4091, and notes; § 4226.

[Constitutionality of acts of legislature authorizing taxation in aid of corporations. *Draining Co. v. Hooper*, 2 Met. 354; *Fence Co. v. McAllister*, 12 Bush, 314.

Mere imposition of taxes when charter is granted or afterward will not authorize assumption that legislature has contracted that no additional taxation shall be imposed. *R. R. Co. v. Comm.*, 10 Bush, 48.

The imposition of a State tax upon property of a corporation is no violation of the contract or privilege given by the charter, unless by such

charter the right to levy the tax be expressly surrendered. *Canal Co. v. Comm.*, 7 B. M. 161.

Neither national nor State governments can tax a corporation legally established by either, though they may tax its funds within their boundaries. *Comm. v. Morrison*, 2 Mar. 96; see *Comm. v. Milton*, 12 B. M. 228.

An intention to surrender the power of taxation will not be imputed to the State unless the language leaves no other alternative. *R. R. Co. v. Bourbon Co.*, 82 Ky. 497. An act imposing additional taxation for county purposes is constitutional. *Id.*

The property of a corporation is taxable under a statute authorizing the taxation of the property of "white persons" for graded school purposes, unless the corporation claiming that it is exempt shows that its corporators and stockholders are black persons. *Board v. Bell Co.*, 96 Ky. 68.]

§ 190. No corporation in existence at the time of the adoption of this Constitution shall have the benefit of future legislation without first filing in the office of the secretary of State an acceptance of the provisions of this Constitution.

Amendment of charters of old corporations. § 574; see, also, § 570.

[The court will not presume a failure to comply with Constitution, section 190, requiring an existing corporation, in order to get the benefit of future legislation, to file an acceptance of such Constitution. *Elliott v. City of Louisville*, 40 S. W. Rep. 690.]

§ 191. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution shall thereafter be void and of no effect.

See §§ 559, 570.

§ 192. No corporation shall engage in business other than that expressly authorized by its charter, or the law under which it may have been or hereafter may be organized, nor shall it hold any real estate, except such as may be proper and necessary for carrying on its legitimate business, for a longer period than five years, under penalty of escheat.

Forfeiture of charters. Const., § 205. Trusts prohibited. §§ 3915-3921. General powers of a corporation. § 542 (6), and note.

§ 193. No corporation shall issue stocks or bonds except for an equivalent in money paid or labor done, or property actually received and applied to the purposes for which such corporation was created, and neither labor nor property shall be received in payment of stock or bonds at a greater value than the market price at the time said labor was done or property delivered, and all fictitious increase of stock or indebtedness shall be void.

See § 544.

[Where corporation issued bonds with interest coupons attached, and after insolvency of cor-



poration some uncancelled coupons were found in possession of president, his claim against corporation for amount of those coupons, upon ground that he had paid them out of his own means, cannot be sustained. *Lloyd v. Wagner*, 93 Ky. 644; s. c., 21 S. W. Rep. 354.

Where a stockholder has paid his subscription in full by a transfer of land which proves to be of less value than was agreed upon, he cannot be made liable to creditors on his subscription until the land has been exhausted. *Land Co. v. Cooke*, 44 S. W. Rep. 391.]

§ 194. All corporations formed under the laws of this State, or carrying on business in this State, shall, at all times, have one or more known places of business in this State, and an authorized agent or agents there, upon whom process may be executed, and the general assembly shall enact laws to carry into effect the provisions of this section.

See Statutes, § 571, and note. Foreign corporation, subject to laws governing domestic corporation. Const., § 202.

§ 195. The commonwealth, in the exercise of the right of eminent domain, shall have and retain the same powers to take the property and franchises of incorporated companies for public use which it has and retains to take the property of individuals, and the exercise of police powers of this commonwealth shall never be abridged, nor so construed as to permit corporations to conduct their business in such manner as to infringe upon the equal rights of individuals.

See Const., §§ 13, 242.

§ 196. Transportation of freight and passengers by railroad, steamboat or other common carrier, shall be so regulated, by general law, as to prevent unjust discrimination. No common carrier shall be permitted to contract for relief from its common-law liability.

Consolidation with competitors prohibited. Const., § 201. Trusts and combinations prohibited. Const., § 198; Statutes, §§ 3915-3921.

§ 197. No railroad, steamboat or other common carrier, under heavy penalty to be fixed by the general assembly, shall give a free pass or passes, or shall, at reduced rates not common to the public, sell tickets for transportation to any State, district, city, town or county officer, or member of the general assembly, or judge; and any State, district, city, town or county officer, or member of the general assembly, or judge, who shall accept or use a free pass or passes, or shall receive or use tickets or transportation at reduced rates not common to the public, shall forfeit his office. It shall be the duty of the general assembly to enact laws to enforce the provisions of this section.

§ 198. It shall be the duty of the general assembly from time to time, as necessity

may require, to enact such laws as may be necessary to prevent all trusts, pools, combinations or other organizations, from combining to depreciate below its real value any article, or to enhance the cost of any article above its real value.

See Statutes, §§ 3915-3921; Const., §§ 196, 201, 206.

§ 199. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and to connect the same with other lines, and said companies shall receive and transmit each other's messages without unreasonable delay or discrimination, and all such companies are hereby declared to be common carriers and subject to legislative control. Telephone companies operating exchanges in different towns or cities, or other public stations, shall receive and transmit each other's messages without unreasonable delay or discrimination. The general assembly shall, by general laws of uniform operation, provide reasonable regulations to give full effect to this section. Nothing herein shall be construed to interfere with the rights of cities or towns to arrange and control their streets and alleys, and to designate the places at which, and the manner in which, the wires of such companies shall be erected or laid within the limits of such city or town.

§ 200. If any railroad, telegraph, express, or other corporation, organized under the laws of this commonwealth, shall consolidate by sale or otherwise, with any railroad, telegraph, express or other corporation organized under the laws of any other State, the same shall not thereby become a foreign corporation, but the courts of this commonwealth shall retain jurisdiction over that part of the corporate property within the limits of this State in all matters which may arise, as if said consolidation had not taken place.

§ 201. No railroad, telegraph, telephone, bridge or common carrier company shall consolidate its capital stock, franchises or property, or pool its earnings, in whole or in part, with any other railroad, telegraph, telephone, bridge or common carrier company, owning a parallel or competing line or structure, or acquire by purchase, lease or otherwise, any parallel or competing line or structure, or operate the same; nor shall any railroad company, or other common carrier combine or make any contract with the owners of any vessel that leaves or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

See Const., §§ 196, 198; Statutes, §§ 3915-3921. Service of summons on common carrier. Civ. Code, § 51.

§ 202. No corporation organized outside the limits of this State shall be allowed to transact business within the State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this commonwealth.

See Const., §§ 194, 200; Statutes, § 571, and note.

[Corporation established by laws of Ohio, and same corporation established by statute of Kentucky are agents for each other and bound by each other's transactions of their common business. *Bridge Co. v. Woolley*, 78 Ky. 525. Employment by the Kentucky corporation of an attorney binds the Ohio corporation for the payment of a reasonable fee. *Id.*]

§ 203. No corporation shall lease or alienate any franchise so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

See Statutes, § 562.

§ 204. Any president, director, manager, cashier or other officer of any banking institution or association for the deposit or loan of money, or any individual banker, who shall receive or assent to the receiving of deposits after he shall have knowledge of the fact that such banking institution or association or individual banker is insolvent, shall be individually responsible for such deposits so received, and shall be guilty of felony and subject to such punishment as shall be prescribed by law.

See Statutes, §§ 548-550.

§ 205. The general assembly shall, by general laws, provide for the revocation or forfeiture of the charters of all corporations guilty of abuse or misuse of their corporate powers, privileges or franchise, or whenever said corporations become detrimental to the interest and welfare of the commonwealth or its citizens.

Causes of forfeiture. Statutes, § 569.

§ 206. All elevators or storehouses, where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses, subject to legislative control, and the general assembly shall enact laws for the inspection of grain, tobacco and other produce, and for the protection of producers, shippers and receivers of grain, tobacco and other produce.

See Const., § 198.

§ 207. In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled

to vote in said company under its charter, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates, and such directors or managers shall not be elected in any other manner.

Election of directors. Statutes, § 551.

§ 208. The word corporation as used in this Constitution shall embrace joint-stock companies and associations.

See Statutes, § 457.

§ 241. Whenever the death of any person shall result from an injury inflicted by negligence or wrongful act, then, in every such case, damages may be recovered for such death, from the corporations and persons so causing the same. Until otherwise provided by law, the action to recover such damages shall in all cases be prosecuted by the personal representative of the deceased person. The general assembly may provide how the recovery shall go and to whom belong; and until such provision is made the same shall form part of the personal estate of the deceased person.

[Contributory negligence not a defense for injuries caused by wilful neglect of defendant, unless injury received was caused wholly by plaintiff's negligence. *Admr. v. R. R. Co.*, 82 Ky. 610.]

§ 242. Municipal and other corporations, and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by them; which compensation shall be paid before such taking, or paid or secured, at the election of such corporation or individual, before such injury or destruction. The general assembly shall not deprive any person of an appeal from any preliminary assessment of damages against any such corporation or individual made by commissioners or otherwise; and upon appeal from such preliminary assessment, the amount of such damages shall, in all cases, be determined by a jury, according to the course of the common law.

See Const., §§ 13, 195.

[Power of private corporation to take private property for its use, being a delegation of sovereign power, must be construed as it would be if delegated to a municipal corporation. *R. R. Co. v. Metcalfe*, 4 Met. 205.]

§ 244. All wage-earners in this State employed in factories, mines, workshops, or by corporations shall be paid for their labor in lawful money. The general assembly shall prescribe adequate penalties for violations of this section.

## THE KENTUCKY STATUTES — 1894.

## CHAPTER XXVI.

## Construction of Statutes.

## Sec. 457. Construction of words.

§ 457. \* \* \* The word "person" may extend and be applied to bodies politic and corporate, \* \* \* as well as individuals, partnerships, persons and joint-stock companies. The words "corporation," "company," may be construed as including any corporation, company, person, persons, partnership, joint-stock company or association.

See Const., § 208; Civ. Code, § 732.

[A corporation is "a person" within meaning of fourteenth amendment to Constitution of United States, and no State can deny to any corporation the equal protection of the law. And corporations are also embraced by Kentucky Bill of Rights. But these do not effect police power of the State. *Schoolcraft v. R. R. Co.*, 92 Ky. 233; s. c., 17 S. W. Rep. 567.]

## CHAPTER XXXII.

## Private Corporations.

## ARTICLE I. GENERAL PROVISIONS CONCERNING CORPORATIONS.

## Sec. 538. Corporators; number necessary; laws applicable.

539. Articles of incorporation; what they shall specify.

540. Articles; how executed and recorded.

541. Direction of affairs until directors elected.

542. Business; when may begin; powers of corporations.

543. Capital stock; amount to be subscribed; how collected.

544. Capital stock; when corporation may purchase its stock.

545. Shares, how transferred; liability of purchaser.

546. Book of names, addresses and shares of stockholders and transfers.

547. Stockholders; liability of; action to enforce; limitation.

548. Directors; when liable for debts of corporation.

549. Officers and directors; liability for false report.

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551. Directors; number of; manner of electing; stock to be owned by.

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553. Capital stock; manner of increasing or reducing.

554. Organization of old corporations under this chapter; effect of.

555. Consolidation of corporations; how effected.

556. Rights and liabilities of consolidated corporation.

557. Actions pending, not affected by a consolidation.

558. Stockholders in corporations that consolidate; when to be paid.

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560. Liability not affected by sale, consolidation or amendment.

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Sec. 562. Sale of corporation; purchasers may organize new corporation; rights and liabilities.

563. Sale of, under decree; requisites of.

564. Shares may be divided into classes; rights of each class.

565. Time in which corporation must commence business.

566. Organization; want of legal not a defense.

567. Business corporation may engage in; what land may be held.

568. Stock or bonds not to be issued except for value.

569. Forfeiture of charter; causes for.

570. Constitution, provisions of, to be accepted.

571. Agent upon whom process may be executed to be located in State; penalty.

572. Action; removal to, or institution in Federal court forbidden; penalty.

573. Charters in conflict with this chapter; provisions relating to; penalty.

574. Amendment of charters of old corporations.

575. Directors; meaning of word.

576. Word "incorporated" to be used by certain corporations; penalty.

§ 538. Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose under the provisions of, and subject to the requirements of, this article; but banking, building and loan, trust, insurance and railroad corporations shall, in addition to the provisions of this article, which are not inconsistent with the laws relating especially to them, be organized in the manner and subject to the provisions of such laws.

Grant of exclusive or unalterable privileges prohibited. Const., § 3.

[Whether corporation is public or private, how determined. *R. R. Co. v. Metcalfe*, 4 Met. 205; *Louisville v. Comm.*, Duv. 297. It does not alter its character that another corporation, the State, or the United States, owns a portion of its stock. *Id.*

Lottery privileges granted by legislature is not an act of incorporation, nor does it amount to a contract. *Gregory v. Trustees*, 2 Met. 597.

Private corporations are created for the interest of individuals, and they may make by-laws, the existence of which the public are not required to take notice. *Murphy v. Louisville*, 9 Bush, 196.

Corporations granted entirely by the crown of England before the Revolution may still exist in Kentucky. *Pendleton v. Bank*, 1 Mon. 175.

Courts take judicial notice of an act of the legislature creating a corporation. *Lackey v. R., etc., Co.*, 17 B. M. 47; *Bank v. Newport M. Co.*, 1 *Id.* 14. And of the names of corporations. *Pendleton v. Bank*, 1 Mon. 175; *Bank v. N. M. Co.*, *supra*. But cannot know judicially that members of a corporation are citizens. *Lex. M. Co. v. Dorr*, 2 Litt. 257.

Legislature has power to incorporate a company for the purpose of building a bridge across the Ohio river, withholding the power of organization until the Ohio legislature confirmed the act of incorporation. *Covington v. Bridge Co.*, 10 Bush, 73.

Legislature has power to pass all acts of incorporation or delegate the power to others to do so. *Cheney v. Hooser*, 9 B. M. 334.

Charter enacted subject to confirmation in another State allowable. *Covington v. Bridge Co.*, 10 Bush, 73.

Act of legislature continuing charter privileges and rights beyond the time fixed by the original act, does not have the effect of creating a new charter, but merely extends the life of the one already in existence. *Franklin Co. Ct. v. Bank*, 87 Ky. 570; s. c., 9 S. W. Rep. 212.

Not unconstitutional for legislature to empower a corporation to act as the statutory guardian of infants. *Johnson v. Johnson*, 88 Ky. 276; s. c., 11 S. W. Rep. 5.

One person cannot organize a corporation under the general law, but when a corporation has been created, the purchase, in good faith, by one stockholder of all the stock does not destroy existence of corporation, but merely suspends its franchise until the stock may be transferred to others. *Banking Co. v. Eisenman*, 94 Ky. 83; s. c., 21 S. W. Rep. 331, 1049.

The purchase of all the stock of a corporation by a single stockholder suspends existence of the corporation so far as the public is concerned. *G. T. S. Co. v. Taylor*, 95 Ky. 651; s. c., 27 S. W. Rep. 247.]

§ 539. Such persons shall execute articles of incorporation, which shall specify:

First. The name of the corporation, which shall be such as to distinguish it from any other corporation engaged in the same business, or promoting or carrying on the same objects or purposes in this State.

Second. The name of the city or town and county in which its principal office or place of business is to be located.

Third. The nature of the business, or objects or purposes proposed to be transacted, promoted or carried on.

Fourth. The amount of its capital stock, if any, and the number of shares into which the same shall be divided.

Fifth. The names and places of residence of each of its stockholders, and the number of shares of stock subscribed by each.

Sixth. The time when it is to commence, and the period it is to continue.

Seventh. By what officers or persons the affairs of the corporation are to be conducted, and the time and place at which they are to be elected.

Eighth. The highest amount of indebtedness or liability which the corporation may at any time incur.

Ninth. Whether the private property of the stockholders not subject by the provisions of the law under which it is organized shall be subject to the payment of corporate debts, and if so, to what extent.

§ 540. The articles shall be signed and acknowledged by the parties thereto, before any officer authorized to take acknowledgments to deeds, and recorded in the county clerk's office of the county in which its principal office or place of business is to be located, and a copy thereof shall be filed and recorded in the office of the secretary of State; and said articles, or a certified copy thereof, may be used as evidence in any action for or against such corporation; and

all amendments thereto shall become a part of the original articles.

Want of legal organization not a defense. § 566.

[Whether or not a corporation was properly organized according to its charter is a question that cannot be made collaterally, but must be by direct proceeding against the corporation. *Hughes v. Bank*, 5 Litt. 46; *Wight v. R. R. Co.*, 16 B. M. 7; *Gill v. Mining Co.*, 7 Bush, 639.

One may put in issue the organization of a national bank, when. *Huffaker v. Bank*, 12 Bush, 292.

The fact that a bank commenced operations contrary to its charter will not absolve a debtor to the institution from the payment of his debt. *Hughes v. Bank*, supra.

Generally one dealing with a corporation is not permitted to deny its existence. *R. R. Co. v. Leavell*, 16 B. M. 363. And it is very questionable whether one who participated as a stockholder in election of directors may. Id.

Act to establish private corporation must be construed strictly as against the corporation, but liberally in favor of the public. *Maddox v. Graham*, 2 Met. 72; *R. R. Co. v. Warren Co. Ct.*, 10 Bush, 724.

Corporation created under the general law may commence business as soon as articles are filed for record in office of county court clerk, and franchises cannot thereafter be declared null and forfeited except in regular proceeding instituted for that purpose. Defects can only be taken advantage of in a direct proceeding to annul the franchise. *Walton v. Riley*, 85 Ky. 413; s. c., 3 S. W. Rep. 605; *T. P. Co. v. Bobb*, 88 Ky. 226; s. c., 10 S. W. Rep. 794; *Heinig v. Mfg. Co.*, 81 id. 300, is overruled; *Walton v. Riley*, supra. It is not essential to validity of acts of a corporation that the newspaper publication required by the statute should have been made, or that the articles of incorporation should have been filed with the secretary of State. Id. Where clerk certified that articles were lodged for record and duly recorded, it is to be presumed that they were recorded in the proper book. But even if they were recorded in a deed book, the acts of the corporation were thereby rendered invalid. Id.

A corporation doing business after April 5, 1893, without complying with the provision of the law requiring filing of statement in office of the secretary of State, giving the location of its principal office, etc., cannot escape penalty for a violation of the statute upon the ground of ignorance of its existence. *Coal Co. v. Commonwealth*, 96 Ky. 373.]

§ 541. Until the directors are elected, the signers of the articles of incorporation shall have the direction of the affairs of the corporation, and may take such steps as are proper to obtain the necessary subscriptions to stock, and to perfect the organization of the corporation.

Election of directors. § 551.

[Presumption in favor of regularity of proceedings, nothing to the contrary appearing on the records. *Lexington v. Headley*, 5 Bush, 511.

A corporation held liable for contracts entered into by its promoters. *Morton v. Hamilton College*, 38 S. W. Rep. 1.

Where land was purchased by promoter for the corporation which issued stock, to the promoter who distributed it among all the promoters, held, that there was a full payment for the stock. *Mercer v. Water Co.*, 38 S. W. Rep. 841.]

§ 542. When the articles are filed and recorded as provided, and the license tax imposed is paid to the State, the corporation

## Corporate powers — Stat., § 542.

shall be deemed to be organized for the purpose of transacting, promoting or carrying on the business or purpose for which it was created; and shall thereupon become a body-corporate, and be known by its corporate name, and as such may adopt and use a corporate seal;

Actions in corporate name. See § 542 (1). General assembly may revoke or alter charters. Const., § 205. Want of organization not a defense. § 566. Termination of corporation. §§ 561, 569. Corporate name to be conspicuously posted. § 576.

[Defendant having executed a note to a corporation by its name, is sufficient evidence of its existence by that name. *Woodson v. Bank*, 4 B. M. 203.

In this State, as corporations can be created only by legislative act, all of which the courts must know, they may be bound to know the names of all so created. *Pendleton v. Bank*, 1 Mon. 174.

Existence and organization admitted by subscription to stock. *Lail v. Road Co.*, 13 Bush, 34.

Existence of corporation not put in issue by plea of non-assumpsit to suit it. *Taylor v. Bank*, 7 Mon. 584.

Plea to action upon a note given to a corporation averring the non-existence of the corporation at the commencement of the suit should show the fact by which it ceased to exist. *Jones v. Bank*, 8 B. M. 123.

Grant by or to a corporation will not be vitiated by variation from precise name of corporation when true name can be collected from instrument or is shown by proper averments. *Sem. v. Wallace*, 15 B. M. 44.

In actions by corporations court may take judicial notice of their name. *Pendleton v. Bank*, 1 Mon. 174.

A mere change of a corporate name does not divest title. *McCloskey v. Doberty*, 30 S. W. Rep. 649.

A corporation has no power of itself to change or alter the name originally selected by it without recourse to such form of proceedings as are prescribed by law; and where such change has been made without authority of law, the persons assuming to act in a corporate capacity under the new name, are liable as partners. *Cincinnati Co. v. Bate*, 96 Ky. 356.

Generally, contracts of a corporation must be authenticated by its seal; but to this rule there are many exceptions. *Garrison v. Combs*, 7 J. J. M. 85. For corporation to pass its interest in a promissory note it is not necessary to affix corporate seal to the assignment. *Id.* 89. In regulating itself and its police it may act without seal. It may elect its officers and agents and keep records of its proceedings without affixing a seal. *Waller v. Bank*, 3 J. J. M. 203.

Before corporation can have an existence under the general statute, it must be shown that its provisions have been complied with. *Heinig v. Mfg. Co.*, 81 Ky. 300.]

And shall have power to (1) to sue and be sued;

Agent upon whom process may be served to be located in the State. Const., § 194; Statutes, § 571. Action for negligent injury. Const., § 241. Actions against stockholders. § 547. Actions pending not affected by consolidation. § 557. Certified copy of articles is evidence. § 540. Want of organization not a defense. § 566. Removal of action to, or institution in, Federal court prohibited. § 572. Appointment of receiver. § 616. Service of summons. Civ. Code, §§ 51, 57, 58.

Of notices. *Id.*, § 628. Venue. *Id.*, § 72. Verification of pleadings. *Id.*, § 117. Attachment. *Id.*, § 194. Security for costs. *Id.*, § 616. Actions to vacate charters, etc. *Id.*, §§ 480-488.

[Corporation liable to individuals for injuries caused by negligence of its agents or employees while engaged in their service. *D.*, etc., *R. Co. v. Stewart*, 2 Met. 122.

Corporation responsible for work and labor done at request of its officers. *Underwood v. Lyceum*, 5 B. M. 130. And may be responsible for a trespass. If by its officers it commands it or sanctions it after done. *Id.* Liability of turnpike company for injury caused by its negligence. *T. P. Co. v. Stewart*, 2 Met. 122. Inhabitant of a city who has suffered loss by fire by reason of a breach of contract with the city, may sue the water company without joining the city. *Lumber Co. v. Water Supply Co.*, 80 Ky. 349; s. c., 12 S. W. Rep. 554; 13 S. W. Rep. 249.

Corporation may be compelled by court of chancery to the performance of trusts confided to it. *Chambers v. Baptist Soc.*, 1 B. M. 220.

In action by corporation against shareholders for amount of stock subscribed, no other consideration need be averred than the subscription. *Instone v. Bridge Co.*, 2 Bibb. 576. Where given amount of stock is required to be subscribed before a corporation is authorized to go into operation, it is necessary to allege that requisite amount has been subscribed. *Fry v. R. R. Co.*, 2 Met. 224. But upon an unconditional promise to pay a corporation a sum certain, either as a debt or as a subscription, unnecessary to aver that requisite amount of stock has been subscribed. *Lail v. Road Co.*, 13 Bush, 34.

In action by railroad company against subscriber, defendant may plead as a counterclaim that it was agreed that any damage done his land should go as a credit on his subscription. *R. R. Co. v. Thompson*, 18 B. M. 742.

Action lies in corporate name, after company is organized, to recover stock subscribed to corporation, payable to president and directors, before company was organized. *Lackey v. R.*, etc., *Co.*, 17 B. M. 48.

Corporations suing must execute bonds for costs. *P.*, etc., *Works v. L.*, etc., *Co.*, 11 Bush, 48. But now reasonable time is allowed plaintiff to give the bond. Code, § 617.

Chancellor has jurisdiction to enjoin a corporation from an abuse of its powers. *Dudley v. Trustees*, 12 B. M. 615.

In actions by corporations, court may take judicial notice of their name. *Pendleton v. Bank*, 1 Mon. 175. Courts may know by the name of plaintiffs that they are extra-territorial, and are incorporations, and will thereon sustain their actions. *Bank v. N. M. Co.*, 1 B. M. 15.

Judgments against turnpike road company, how enforced. *T. P. R. Co. v. Vimont*, 5 B. M. 1.

Mandamus will not lie against a private corporation or its officers. *Cook v. College*, 9 Bush, 544.

Misnomer of corporation by omitting "and company," not fatal; but the bond recoverable upon by averring it was executed to the corporation. *Pendleton v. Bank*, 1 Mon. 175.

To authorize a corporation created by statute to sue, not necessary to aver its regular organization. *R. R. Co. v. Leavell*, 16 B. M. 258.

Corporation may maintain action in its own name on official bonds of its officers, though executed to president and directors, if it was executed for protection of the corporation. *Graves v. Bank*, 10 Bush, 26. Action against officers for misconduct as such should be brought by corporation itself, but if it be still in hands of such officers, stockholders may sue instead. Such suit by stockholders must be in equity, even though it be founded on a tort, as they have no right to sue at law. *Jones v. Johnson*, 10 Bush, 660.

In bill against stockholders of a defunct corporation, all stockholders should be made parties, if living; if dead, then their personal representatives, if any; if none, then their heirs. A decree

in such case may be against one stockholder, if his liability as a corporation exceed the amount decreed. *De Wolf v. Mallett*, 2 J. J. M. 402.

Upon return of nulla bona against a corporation, creditor may maintain bill against any member or director who holds funds of the corporation, without making all members of corporation parties. *Gratz v. Redd*, 4 B. M. 197.

Joinder of president with other directors of a bank to recover for loss of deposit occasioned by their negligence is not objectionable. *Shakers v. Underwood*, 9 Bush, 621.

Officers of bank not necessary parties to a bill against it. *Wood v. Bank*, 5 Mon. 197.

In action to subject to sale a turnpike road, with its franchises, etc., if the stockholders be necessary parties, where they are numerous and it is impracticable to bring them all before the court, one or more may be allowed to defend for all. *T. P. E. Co. v. Ballard*, 2 Met. 171.

In suit by bondholders to foreclose mortgage upon railroad and its franchises, to compel payment of interest due and arrears, if the property is divisible, a sale should be ordered of so much as might satisfy the amount due; if not divisible, it should be sold or leased as entirety; in the latter case, if no one will take it for a term of years, then to be sold absolutely, the company to elect whether the property should be first offered for a term of years. *R. R. Co. v. Metcalfe*, 4 Met. 211. If leased, lessee should be required to give bond to keep property in good repair, and court should cause an inventory to be made by a commissioner. *Id.*

Action may be maintained against a corporation upon a liability imposed by the statute creating it; or which results, by implication of law, from its acts; or upon a judgment. *Blanchard v. T. P. Co.*, 1 Dana, 87.

An action against a common carrier, whether a corporation or not, upon a contract to carry property, must be brought in county in which defendant, or either of several defendants resides, or in which the contract is made, or in which carrier agrees to deliver the property. *Express Co. v. Crenshaw*, 78 Ky. 136. And the summons may be served where the action is brought upon the defendant's chief officer or agent who resides therein. *Id.*

President and directors having power to institute action have power to dismiss it. *Shawhan v. Zinn*, 79 Ky. 300. To enable stockholder to sue for the corporation, or his associate stockholders, where the rights of the corporation are involved, he must allege that directors decline to sue, or refuse to permit him to sue in the name of the corporation, and the corporation must be a party, plaintiff or defendant. *Id.* Failure to make the corporation a party is not a mere defect, but leaves the stockholder without a cause of action, and his action should be dismissed absolutely. *Id.*

To maintain an action against a corporation upon a note signed by officers without special designation attached, it would be necessary to aver a mistake in its execution, and ask a reformation of the obligation. *McKensey v. Edwards*, 88 Ky. 272; s. c., 18 S. W. Rep. 815.

The defendant being indicted as a corporation, failure to show that it was such was fatal to the prosecution. *Coal Co. v. Commonwealth*, 96 Ky. 218.

A corporation may recover from its stockholders assets divided among them under a belief that the corporation was solvent. *Grant v. Ross*, 37 S. W. Rep. 263.

The fact that stockholders authorized directors to distribute the corporate assets among them under the belief that the corporation was solvent, does not prevent the corporation recovering such assets. *Id.*

A cause of action to recover dividends on corporate stock accrues when the dividend is declared. *Turnpike Co. v. Wickliffe's Admr.*, 38 S. W. Rep. 866.

A declaration of a dividend by a corporation is an obligation in writing for payment of money within the Statute of Limitations. *Id.*

## 2. To contract and be contracted with;

Contracts in restraint of competition prohibited. Const., §§ 196, 198, 201; Statutes, §§ 3915-3921. Corporate seal not essential to contract. § 542, note.

[A contract of a corporation which is neither prohibited by law or its charter, and not foreign to the purposes for which it was created, is valid. *Bridge Co. v. Frankfort*, 18 B. M. 46.

A corporation may, by its agents, make contracts beyond limits of State in which it is established, if contracts are authorized by its charter and not inconsistent with local law. *Lathrop v. Bank*, 8 Dana, 115. And may collect and secure by contract a debt due to it by virtue of a contract made in the State under whose laws it is established. *Id.* 118. Corporation may bind itself by unsealed instruments executed by its agents. *Bank v. U. M. Co.*, 1 B. M. 14. Parol agreement made by directors not binding on corporation. *Hughes v. Bank*, 5 Litt. 46.

Liability of corporation on contracts, same as that of natural person. *Muir v. Canal Co.*, 8 Dana, 161.

Though corporation may not have privilege of issuing notes or checks, and it be a penal offense to do so, yet it is bound to pay for plates or checks procured by their officers for that purpose. *Underwood v. Lyceum*, 5 B. M. 130.

Where corporation violates contract made through its agent, the right of the injured party to recover damages is unquestioned. *Murphy v. Louisville*, 9 Bush, 197.

To bind corporation by implied promise, acts of corporation or of authorized agent within scope of his authority, from which promise may be implied, must be shown. *T. P. Co. v. Looney*, 1 Met. 552.

There is an implied undertaking by every corporation to render to the public, as far as it reasonably can, that service for which it was created, and not voluntarily render itself unable to perform it. *Kenton Co. Ct. v. T. P. Co.*, 10 Bush, 532.]

## 3. To pledge or mortgage its property, real or personal, to secure the fulfillment of its contracts;

Corporation may hold what real estate. § 567.

[At common law corporations may contract for land as well as for anything else. They have the right to acquire land by contract, except so far as restricted by the objects of their creation or by limitations in their charter. *Lathrop v. Bank*, 8 Dana, 119.

Railroad company authorized to borrow money has implied power to make a mortgage, though it cannot mortgage its corporate existence or any prerogative franchise conferred upon it. *R. R. Co. v. Metcalfe*, 4 Met. 206.

Corporation may have the common-law right, without the intervention of a court, to sell mortgaged property in execution of a power given in the mortgage. *Hahn v. Pindell*, 3 Bush, 189.

Power to pledge franchises and rights of a corporation implies power to pledge everything necessary to the enjoyment of the franchise. *Phillips v. Winslow*, 18 B. M. 445.

Legislature may authorize corporation created by it to borrow money by mortgaging its property and franchises or by issuing preferred stock and pledging its revenue for payment of dividend thereon when such course is necessary to carry into effect the object for which the corporation was created. *Covington v. Bridge Co.*, 10 Bush, 71.

"We, the directors of B. E. & H. T. P. Co., promise to pay to W. \$1,500," etc.—held to be the individual obligation of the signers. *Pack v. White*, 78 Ky. 243.]

4. Appoint, remove and elect officers, define their duties, and require from any of them a bond for the faithful discharge of their duties;

See §§ 548-551.

[The law implies a contract on part of officers that they will use ordinary care and act honestly; and a suit by stockholders to settle a trust in the hands of assignee of corporation may be joined with an action against the officers for negligence and fraudulent management. *Jones v. Johnson*, 10 Bush, 638.

Vote or resolution appointing agent need not be entered on minutes of corporation unless required by charter. *Covington v. Bridge Co.*, 10 Bush, 81.

Those who deal with officers of a corporation are bound to take notice of the powers conferred by the act of incorporation; therefore such officers are not personally liable to those with whom they deal in matters beyond their authority. *Sandford v. McArthur*, 18 B. M. 421.

Officer of corporation acting within scope of his authority is not individually bound. *Taylor v. Williams*, 17 B. M. 494.

To bind corporation by contract made by president it must be shown that he had power by the act of incorporation, or that corporation authorized him or subsequently ratified the contract. *T. P. Co. v. Looney*, 1 Met. 551.

Presumption in favor of officers' acts. *Louisville v. Hyatt*, 2 B. M. 180.

Officers properly elected will hold until successors appointed, notwithstanding time of election shall have elapsed. *Wier v. Bush*, 4 Litt. 433.

Corporation may appoint an agent and be bound by his acts. *Garrison v. Combs*, 7 J. J. M. 86.

An agency for collecting and securing the debts of a corporation may be created without the use of a corporate seal. *Lathrop v. Bank*, 8 Dana, 115.

Parol evidence admissible to show appointment of agent of which no note has been made on the records. *Covington v. Bridge Co.*, 10 Bush, 81.

Resistance by corporation to an attempt to recover property acquired by its agent is sufficient recognition of the agency. *Lathrop v. Bank*, 8 Dana, 115.

It is the duty of bank directors to use ordinary diligence in acquiring knowledge of business of the bank. Where directors have knowledge of gross negligence or carelessness of an officer, they will be personally liable. *Shakers v. Underwood*, 9 Bush, 621.

Want of diligence of directors of a company constitutes no defense by cashier for his negligence, and he and his sureties are liable. *Batchelor v. Bank*, 78 Ky. 443. Right of bank directory to bind, control, and direct subordinates is necessarily implied. *Id.* Therefore cashier is not an insurer of the honesty and fidelity of his subordinates. *Id.* Duty of cashier defined. *Id.*

Executive officer of the corporation, whose duty it is to transact its general business, binds the company by his acts done within the scope of the general usage, practice and course of business of the corporation. *Ins. Co. v. Bowman*, 84 Ky. 430; s. c., 1 S. W. Rep. 717.

Treasurer of a corporation has no authority to issue notes in the name of the corporation in the absence of express authority. *Bank v. Wagner*, 93 Ky. 525.

An agent of a corporation may bind it if he acts under immediate instruction from some superior agent authorized to thus act, or from board of directors. *Bank v. Wagner*, 93 Ky. 525; s. c., 20 S. W. Rep. 535.]

5. To prescribe by its board of directors by-laws for the government of the corporation not inconsistent with law;

See § 545.

[Corporation may pass by-laws, elect officers and agents, and keep record of its proceedings; and they are all valid without affixation of seal. *Waller v. Bank*, 3 J. J. M. 203.

The power to make by-laws is limited by the nature of the corporation and the laws of the country. It can make no rule contrary to law, good morals or public policy. *Sayre v. Assn.*, 1 Dav. 144.

By-laws held to be in conflict with statutes. *Herbert v. B. & S. Assn.*, 11 Bush, 297.]

6. And to exercise, subject to law, such powers as may be necessary to conduct the business or promote and carry on the objects and purposes for which it was organized.

Corporation may engage in what business. § 567. Forbidden to loan money or discount bills. § 1391. Unauthorized business prohibited. Const., § 192.

[The act of incorporation gives to the body corporate all the power it possesses. *Maddox v. Graham*, 2 Met. 72.

Corporations have the implied power to deal on credit and borrow money, and bind themselves by the usual evidences of credit, bills and notes. *Bank v. N. M. Co.*, 1 B. M. 14.

A corporation may receive the delivery of a deed and livery of seisin, or what is equivalent. *Pendleton v. Bank*, 1 Mon. 188.

Corporations have such powers as are expressly given them by their charters, or such as, by fair implication, are necessary to the execution of their object. *R. R. Co. v. Lit. Soc.*, 91 Ky. 395; s. c., 15 S. W. Rep. 1065; *R. R. Co. v. Metcalf*, 4 Met. 266.

Assignment of note may be made by a corporation by an entry to that effect in its registry. *Garrison v. Combs*, 7 J. J. M. 88.

Corporation must exercise its functions strictly according to the letter of the statute creating it. *Bank v. Norvell*, 2 Mar. 102.

A banking corporation being a creature of statute has only the power conferred by its charter. *Thweatt v. Bank*, 81 Ky. 1. A stock corporation has no implied power to buy and sell real estate, except to obtain buildings in which to transact its legitimate business. *Id.*

Purchase of lands by lumber company not ultra vires, when. *Lumber Co. v. Green*, 87 Ky. 257; s. c., 8 S. W. Rep. 439. Or of note by a bank at "umping discount." *Nicholson v. Bank*, 92 Ky. 251; s. c., 17 S. W. Rep. 627.]

§ 543. At least fifty per cent. of the capital stock of each corporation shall be in good faith subscribed before it shall be authorized to transact any business with the persons other than its stockholders; and the capital stock shall be paid in such amounts and at such times as the directors may require; and when any corporation is authorized to commence business, it may, if its whole capital stock has not been subscribed, open books for additional subscriptions to its capital stock; and when any stockholder fails to pay any installment on the stock when requested by the directors, they may sell a sufficiency of the stock of such delinquent at public sale to pay the amount due, with costs and interest, having first given him twenty days' notice in writing, if he reside in the county, or, if not, by letter mailed to his last known address, of the time and place when and where the stock will be sold, or they may collect it by action; if no bidder

can be found to pay the amount due on the stock, and it cannot be collected, the amount previously paid in by the delinquent on the stock shall be forfeited to the corporation, by order of the board of directors, and such stock sold by it within one year from the time of such forfeiture; if the stock is sold, and there remains a surplus after the payment of the amount due, with interest and costs, such surplus shall be paid to the original owner of the stock, his heirs or assigns.

Liability of stockholders. § 547. Transfer of shares. § 545. Shares divided into three classes. § 564. Increase of stock. § 553. Not to be issued except for value. § 568.

[Right of company to take a forfeiture of stock does not interfere with the common-law right and remedy of enforcing the payment of the stock subscribed. *Gratz v. Redd*, 4 B. M. 193.

Remedy against delinquent subscribers is to enforce payment by a judgment for the money, and not by a forfeiture or sale of the stock. *Gill v. Mining Co.*, 7 Bush, 640.

Taking stock creates a contract, express or implied, to pay for it in mode prescribed by the charter. *Gill v. Min. Co.*, 7 Bush, 638.

No defense to action to recover amount of subscription that no certificate of stock has been tendered. *Smith v. Gower*, 2 Duv. 19.

Subscriptions before incorporation not mutually binding upon the subscribers. *Goff v. College*, 6 Bush, 447.

Where charter prescribes form of subscription for stock as to president and directors, subscription is valid, although company was not organized when it was made; it takes effect so soon as obligees come into existence. *Lackey v. R.*, etc., Co., 17 B. M. 48.

Order of county court, by which county was pledged for \$5,000 to continue a turnpike, there being then no company organized, not valid as a subscription of stock in the company. *W.*, etc., Co. v. *Clarke Co. Ct.*, 3 Met. 144.

In all essential particulars the provisions of an act authorizing a municipal corporation to subscribe for stock in a railroad company, and to issue bond in payment thereof, must be complied with, and if not followed the bond will be void unless the defect is cured by subsequent legislation. *Id.*; *Shelby Co. Ct. v. R. R. Co.*, 8 Bush, 216.

Company had the right to accept the conditional subscription of county court for stock in a turnpike company, the money subscribed to be used in erecting a certain bridge; and the subsequent destruction of the bridge did not affect this subscription, but was the loss of company. *Mercer Co. Ct. v. S.*, etc., Co., 10 Bush, 257.

Subscriptions of stock by a county court must be made in substantial conformity to mode prescribed in the law. County courts under the law can only act through their orders made of record. *W.*, etc., Co. v. *Clark Co. Ct.*, 3 Met. 143; *Mercer Co. Ct. v. Nav. Co.*, 8 Bush, 307. Such subscriptions binding, when, *Id.*

County court has no authority to appoint an agent to make subscription, when. *Mercer Co. Ct. v. Nav. Co.*, 8 Bush, 307.

No general power is conferred on county courts to issue bonds or to subscribe stock in behalf of the county in aid of corporations, and when this extraordinary power is conferred by legislative enactment it will be strictly pursued. *Bullock v. Curry*, 2 Met. 174.

An order of county court directing county judge to subscribe for stock in a corporation upon contingencies therein named did not of itself amount to a subscription. *R. R. Co. v. Barren Co. Ct.*, 10 Bush, 614.

Want of authority of county court to subscribe stock is no reason for corporation refusing, after

receiving the money on the subscription, to comply with its agreement to issue to county court certificates for the stock subscribed and paid for. *Mercer Co. Ct. v. S.*, etc., R. Co., 8 Bush, 218.

Charter authorizing county court to make subscription for stock may be changed or restrained by legislature at any time after the election had been held and before subscription was actually made. *R. R. Co. v. Barren Co. Ct.*, 10 Bush, 602. The mere vote to subscribe did not form such a contract with corporation as would be protected by article 1, section 10, Federal Constitution; until subscription was actually made, contract was unexecuted. *Id.*

Subscriptions for stock in railroad affording peculiar local benefits to subscribers, when made in pursuance of legislative authority, may now be regarded as of unquestionable constitutionality. *Shelby Co. Ct. v. R. R. Co.*, 8 Bush, 215.

Subscription by county, city, precinct, etc.; submission to vote, when and how made. *Allison v. L.*, etc., R. Co., 9 Bush, 248.

Money collected by illegal taxation on a void subscription to turnpike is a trust fund for benefit of taxpayers. *Blair v. T. P. Co.*, 4 Bush, 157.

Trustees of a town cannot avoid responsibility for stock subscribed on ground that their agent exceeded his authority, unless they show that company had knowledge of those facts. *Trustees v. T. P. Co.*, 1 Met. 57.

When charter defines terms of subscription for stock it is only necessary that the writing signed by the subscriber should show an intention to become stockholders and the number of shares subscribed for. *Fry v. R. R. Co.*, 2 Met. 316; *Gill v. Mining Co.*, 7 Bush, 638.

Subscription by one to capital stock is a good consideration for the subscription of others. *T. P. Co. v. Lancaster*, 79 Ky. 552. Distinction between agreement to subscribe and a subscription. *Id.*

An issue of stock by a corporation which is not beyond the amount authorized by charter, but which is brought about by fraud of the beneficiary, is not ultra vires, and neither the corporation nor the stockholder will be allowed to claim that it is void against a bona fide holder. *Nail Co. v. Bayless*, 91 Ky. 94; s. c., 15 S. W. Rep. 10. If a stockholder claims that an issue of stock is fraudulent, but there is an unreasonable delay in taking steps to annul it, parties cannot be placed in statu quo, and court of equity will not interfere. *Id.*

One who purchases stock from president of corporation on faith of public statement of officers as to condition, which is false, is entitled to rescission of the contract. *Prewitt v. Trimble*, 92 Ky. 176; s. c., 17 S. W. Rep. 356.

Where agreement provides that, unless a certain amount be subscribed, previous subscriptions shall be void, the petition to enforce the subscription must allege a subscription of the sum specified. *Mill Co. v. Mattingly*, 35 S. W. Rep. 1114.]

§ 544. No corporation shall take, as security for any debt, a lien upon any part of its capital stock, or be the holder or purchaser of any part thereof, unless such lien or purchase shall be necessary to prevent loss upon a debt previously contracted; and stock so purchased shall in no case be held by the corporation for a longer time than one year.

[The charter lien of a corporation on shares to secure the stockholders' indebtedness to it is superior to that of a pledgee of the shares, and is not waived by taking other security. *Bank v. Trust Co.*, 40 S. W. Rep. 458.]

§ 545. The shares of stock shall be transferred on the books of the corporation in such manner as the by-laws thereof may direct, and every person becoming a stock-



## Transfers; liability of stockholders — Stat., §§ 546, 547.

holder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of prior stockholders.

## Liability of stockholder. § 547.

[Certificate of stock on its face transferable; there is no lien upon it for any debt due the corporation. *Fitzhugh v. Bank*, 3 Mon. 128. Lien provided by charter only exists where stockholder becomes indebted to the bank; lien cannot be created after notice of transfer of the stock. *Bank v. McNeil*, 10 Bush, 58.

Where stock is assignable by transfer on books, assignment of certificate with written power to assignee to transfer the stock to himself is a symbolical delivery affecting those who have notice thereof. *Bank v. McNeil*, supra.

Purchaser of stock may compel corporation to permit a transfer on its books. *Fitzhugh v. Bank*, 3 Mon. 128.

Seal not necessary to the scrip or certificates of stock in a corporation. *Fitzhugh v. Bank*, supra.

Bank has no lien on stock of one indebted to it in preference to other creditors. A lis pendens gives preference to such creditors. *Dana v. Brown*, 1 J. J. M. 304.

Where charter provides that stock may be transferred on the books, but that no transfer shall be made by any stockholder indebted to the company until his debt is paid or secured, company has a lien on the stock, and cannot be defeated by the transfer except in the manner pointed out in the charter. *Ins. Co. v. Bowman*, 84 Ky. 430; s. c., 1 S. W. Rep. 717. Such lien not waived by taking mortgage on other property to secure the indebtedness, unless it clearly appears that there was an indebtedness to waive the lien. *Id.*

Transfers of stock in corporation organized under general law are valid, not only between the parties, but as against creditors, although not entered upon the books of the company. *Thurber v. Crump*, 86 Ky. 408; s. c., 6 S. W. Rep. 145. Provision requiring transfers to be made upon the books is for the protection of the corporation and purchasers, and not of creditors of the stockholders. *Id.*; *Nail Co. v. Bayless*, 91 Ky. 94; s. c., 15 S. W. Rep. 10.

A contract of sale of stock passes the rights of the vendor, and vendee may compel transfer upon the books. *Nail Co. v. Bayless*, 91 Ky. 94; s. c., 15 S. W. Rep. 10.]

§ 546. A book shall be kept by every corporation in its principal office, in which shall be entered the name, post-office address and number of shares of stock held by each stockholder, and the time when each person became a stockholder, also all transfers of stock, stating when, the number of shares transferred, and by and to whom. This book shall, at all times during business hours, be subject to the inspection of all stockholders and persons doing business with the corporation.

## See § 545.

§ 547. The stockholders of each corporation shall be liable to creditors for the full amount of the unpaid part of the stock subscribed for by them, and stockholders of corporations not organized for educational, religious, charitable or benevolent purposes, or for the purpose of building, constructing or operating turnpikes or bridges, lines of railroad, telegraph or telephone, or developing or improving lands, mines or waterways, or

constructing or operating water, gas or electric plants, or operating for petroleum, natural gas or salt water, shall be individually responsible, equally and ratably, and not one for the other, for all contracts and liabilities of such corporation to the extent of the amount of their stock at par value, in addition to the amount of such stock; but persons holding stock as fiduciaries shall not be personally liable as stockholders, but the estates in their hands shall be liable, in the same manner and to the same extent as the property of other stockholders; and no transfer of stock shall operate as a release of any such liability existing at the time of such transfer: Provided, The action to enforce such liability shall be commenced within two years from the time of transfer.

## See §§ 543, 564.

[Stockholder may deal with corporation and become a creditor as any other individual, and may be secured as a preferred creditor in an assignment by the corporation. *Ins. Co. v. Page*, 17 R. M. 439.

Where one subscribes for stock in the names of infants, and receives the dividend and enjoys all the benefits from the stock, he is individually responsible. *Castleman v. Holmes*, 4 J. J. M. 7.

Where execution against corporation has been returned nulla bona, the creditor may maintain action in equity against all stockholders jointly. *Bank v. Dallam*, 4 Dana, 574.

Individual liability does not authorize seizure of a stockholder's goods upon execution against the corporation, but imposes a personal liability to contribute to payment of the debt, which may be enforced in equity against all or in action of debt against each. *Id.*

Improper to decree against individual member of company whose stock had been forfeited to company, to satisfy a judgment against company. *R. R. Co. v. Bridges*, 7 R. M. 564.

Every stockholder contracts that the will of majority shall govern in all corporate matters. *Dudley v. High School*, 9 Bush, 578.

Notice of time and place of meetings of stockholders, to be effectual, must be given in the mode prescribed by charter. *Stockholders v. R. R. Co.*, 12 Bush, 63.

Where project is abandoned, lapse of time and changed circumstances may release subscribers to stock. *T. R. Co. v. Jewell*, 8 B. M. 147.

Conditional subscription; not to be paid till a certain amount subscribed; unpaid subscriptions of insolvents, infants, or married women not to be considered. *Phillips v. Bridge Co.*, 2 Met. 223. Such subscription void unless proper amount of private subscriptions has been made. *Clay v. Nicholas Co. Ct.*, 4 Bush, 155.

Where there is danger of misapplication of funds subscribed, a court of equity or of law should refuse to enforce a subscription until corporation properly secures the appropriation of the bonds or their proceeds in accordance with the terms of the subscription. *R. R. Co. v. Judge*, 10 Bush, 575.

Failure to complete work, and fact that corporation is insolvent and defunct, is no defense to action on bonds issued by a city or county to the company in payment of its stock subscriptions. *Maddox v. Graham*, 2 Met. 84.

And innocent holders of such bonds may enforce their payment, though they be not valid as between the original parties. *Id.*

Change of route of railroad will exonerate subscribers from payment of their subscriptions. *Fry v. R. R. Co.*, 2 Met. 317.

As between corporation and a creditor, the latter could compel the payment of the entire stock, if necessary to satisfy his demands. *Haldman v. Ainslie*, 82 Ky. 335. But if a member of the cor-

poration knowingly contracts debts beyond the limits of the articles, without consent of the stockholders, and pay said debts, he cannot recover beyond the limit fixed in the articles, unless the stockholders unanimously agreed to the creation of the debt. *Id.*

As to right to sue corporators in equity for an accounting, see *Laurel Co. Ct. v. Trustees*, 93 Ky. 379; s. c., 20 S. W. Rep. 258.

Claim of corporation against a stockholder for stock subscribed and not paid in, forms part of assets of corporation, and may be subjected by its corporators. *Banking Co. v. Eisenman*, 94 Ky. 83; s. c., 21 S. W. Rep. 531, 1049.

Stockholders of corporation organized under law are personally liable to amount of unpaid installments on stock subscribed by them; but a creditor of the corporation may, by special contract, waive his right to look to the individual stockholders, and oral testimony is competent to show such contract. *Bush v. Robinson*, 95 Ky. 492; s. c., 21 S. W. Rep. 531, 1049.]

§ 548. If the directors of any incorporated company shall declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally individually liable for all debts of the corporation then existing, and for all that shall be thereafter incurred while they, or a majority of them, continue in office.

See §§ 549, 550, 1175, 1186.

[Where directors fail to interpose a proper defense in a suit against the corporation, such failure will not protect one of the faithless directors in his profits realized by such breach of official duty. *R. R. Co. v. Bowler*, 9 Bush, 482.

Chancellor cannot, at the instance of minority of corporation, interpose to prevent application of corporate funds to purposes for which it was raised, against decision of majority of the managers, whatever he might do at instance of majority. *F., etc., R. Co. v. Jewell*, 8 B. M. 144.

Affairs of corporation are always controlled by a majority in interest, unless charter provides otherwise. *Covington v. Bridge Co.*, 10 Bush, 76.

Capital stock paid in for the purpose of constructing a railroad, on being forfeited by the holder, does not become profit and liable to distribution as profit before the object of its payment had been accomplished. *Gratz v. Redd*, 4 B. M. 187.

Illegal dividends may be reclaimed by directors, or by a trustee to whom corporation has made an assignment. *Ins. Co. v. Page*, 17 B. M. 442.

By receiving dividend, stockholders do not ratify illegal acts of directors. *Id.*

Directors may rely upon lapse of time to shield themselves from liability to creditors for dividends improperly paid out. *R. R. Co. v. Bridges*, 7 B. M. 562.

Corporation cannot treat as profits, subject to be divided, premiums received upon unexpired risks, when it had not a fund sufficient independent thereof to meet all liabilities that might accrue on the pending risks. *Ins. Co. v. Page*, 17 B. M. 442.

Directors have no power to submit to arbitration the property of their former action in declaring dividends without consent of company when the charter confers no such power. *Gratz v. Redd*, 4 B. M. 186.

Directors are trustees, and funds in their hands are liable to the debts of the corporation, and may be subjected by the chancellor; and for a fraudulent misapplication of that fund they are personally liable, or the fund itself may be pursued into the hands of one not an innocent holder. *Gratz v. Redd*, 4 B. M. 196.

Quere, might not creditors maintain suit at law against trustees for mismanagement of corporate funds, in improperly declaring dividends when there were no profits to divide? *R. R. Co. v. Bridges*, 7 B. M. 559.

It is a fraud upon the community to permit a corporator to escape responsibility by taking the stock in the name of infants. *Castleman v. Homes*, 7 Mon. 591; *Roman v. Fry*, 5 J. J. M. 634.

Capital stock of railroad company a trust fund in hands of company and liable to payment of debts. *Dudley v. Price*, 10 B. M. 86. To subject such fund creditor must show his legal remedy has been exhausted. *Id.*

Provision in charter requiring tolls to be reduced when road pays greater dividend than allowed by law, construed. *T. P. Co. v. Phelps*, 81 Ky. 613.

Dividends are non-appportionable. Therefore, when stock is devised to one person for life, remainder to another, if dividend is declared after the life tenancy has begun, the whole of it belongs to the life tenant. *Hite's Devises v. Hite's Exr.*, 93 Ky. 257; s. c., 20 S. W. Rep. 778. And this, whether dividend be declared in cash or in stock; but not if dividend is declared out of profits made by sale of real estate with a corporation owned at testator's death. *Id.*

An informal understanding among stockholders that a land bonus should be treated as a dividend will not bind a corporation where no action was taken by the directors. *Wire Nail Co. v. Gedge*, 29 S. W. Rep. 353.]

§ 549. If the directors or officers of any corporation shall knowingly cause to be published or given out any statement or report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published or given out, or assenting thereto, shall be jointly and severally individually liable for any loss or damage resulting therefrom.

See §§ 548, 550, 1175, 1186.

[Intangible corporation not allowed to commit frauds by its visible agent. *T. P. Co. v. Churchill*, 6 Mon. 429.

Director of corporation organized under general law, who has given notice of existence of debts beyond the capital stock, will, nevertheless, be liable for debts subsequently created by the corporation with his assent, express or implied. *Cornwall v. Eastham*, 2 Bush, 562 (§ 516).

§ 550. If the directors or officers of any corporation shall fail or refuse to comply with, or shall violate any of the provisions of, this article, those so failing, refusing or violating shall be jointly and severally individually liable for any loss or damage resulting to any person from such failure, refusal or violation, and, in addition thereto, the persons so liable shall be each punished by a fine of not less than one hundred nor more than one thousand dollars.

See §§ 548, 549, 573, 1175, 1186.

§ 551. The affairs of each corporation shall be managed by a board of not less than three directors, each of whom shall own, in his own right, not less than three shares of capital stock; they shall hold office until their successors are respectively elected and qualified, and a majority of them shall constitute

Directors; increase, etc., of capital stock — Stat., §§ 552-554.

a quorum for the transaction of business. All elections for directors shall be by ballot, and shall be held in this State; and, in the first instance, the directors shall be elected at a meeting held before the corporation is authorized to commence business, and thereafter at an annual meeting of the stockholders to be held on the day named in the by-laws, and which shall not be changed within sixty days next before the day on which the election is to be held; and notice of any change shall be given to each stockholder twenty days before the election is held; and if, for any cause, an election is not held on the day named in the by-laws, a special meeting for that purpose shall be called within thirty days thereafter, of which due notice shall be given to each stockholder in person or by letter mailed to his last known address. A stockholder may vote at any meeting by proxy in writing signed by him, and attested in such manner as the by-laws may prescribe; and a vacancy in the board of directors shall be filled by the board, and the directors so appointed shall hold office until the next annual election. The directors of any corporation may, by a vote of the stockholders, be divided into one, two or three classes, the term of office of those of the first class to expire at the annual election next ensuing, of the second class one year thereafter, and of the third class two years thereafter; and at each annual election held after such classification directors shall be chosen for two or three years, as the case may be, to succeed those whose terms expire. But each director of a banking, trust or insurance company, or building and loan association, must own in his own right five shares of capital stock, and a majority of them must be residents of Kentucky during their terms of office.

See Const., § 207. Officers of corporation. See § 542 (4); see §§ 548-550. Meaning of word "directors." § 575.

[Notice to one director not regarded as notice to board, when. *Lyne v. Bank*, 5 J. J. M. 560.

The chancellor has the power to require an election of directors upon the presentation of a proper case. *Orr v. Bracken Co. Ct.*, 81 Ky. 594.

If a director, by an agreement with his co-directors, sells the bonds of a corporation on his own private account, he will be required to account for all profits realized. *Widrig v. Ry. Co.*, 82 Ky. 511. He is a trustee for both creditors and stockholders, and they will be protected against such bargains. *Id.* So, a director advancing money for his co-directors may have contribution from them. *Id.*

The directors may maintain action against a corporation to collect their demands against it, and to subject its property to mortgage to secure their demands; and neither the judgment nor the purchase of the property under it by plaintiff will be held to be fraudulent, or in trust for their creditors. *McMurtry v. Mass. Tem. Co.*, 86 Ky. 206; s. c., 5 S. W. Rep. 570.

Duties and liabilities of directors defined and discussed. *Jones v. Johnson*, 83 Ky. 530; *Bank v. Caperton*, 87 id. 306; s. c., 8 S. W. Rep. 885.

Individual stockholders have no power as such to represent the body corporate. The board of directors can only bind corporation when acting as a body; and no understanding or agreement

among individual members of the board is binding on the corporation. *American Co. v. Gedge*, 96 Ky. 513.]

§ 552. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose stock is pledged shall be entitled to vote, unless the right to vote be expressly given in writing to the pledgee; and in all elections for directors or managers of any corporation each stockholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates; and such directors shall not be elected in any other manner.

[It is a fraud upon the community to permit a corporator to escape responsibility by taking stock in name of infants. *Castleman v. Homes*, 7 Mon. 591; *Roman v. Fry*, 5 J. J. M. 634.]

§ 553. Any corporation may increase or reduce its capital stock at any time by a vote of, or by the written consent of, stockholders representing two-thirds of its capital stock, and after notice of the proposed increase or decrease has been mailed to the address of each stockholder at least twenty days before the meeting is held for that purpose; and a statement of the increase or reduction shall be signed and acknowledged by the president and a majority of the directors, and filed and recorded in the same manner as articles of incorporation; but no increase of the capital stock of a banking or trust company shall be valid until the amount thereof has been bona fide subscribed, and one-half thereof actually paid in, and the remainder shall be paid in within one year.

Amount required to be subscribed. § 543. Stock not to be issued except for value. § 568.

§ 554. Any corporation created by, and existing under, the laws of this State, may organize under the provisions of this chapter, by executing and recording, as provided, articles of incorporation, and when the requirements of this chapter, and other laws relating to it, are complied with, it may commence business, and become a corporation under this chapter, and thereupon all business effects, assets and property, real and personal, of such corporation shall be vested in, and become, without deed or transfer, the property of the new corporation, subject to all liabilities existing against the corporation, its officers or stockholders, at the time of their reorganization. But no corporation reorganized under this act shall ever charge, exact or receive any greater toll, fare or compensation than permitted by its charter before such reorganization; and all penalties

denounced by such charter for exacting more toll, fare or compensation than permitted by such charter may be enforced notwithstanding such reorganization.

See Const., §§ 190, 191; Statutes, §§ 570, 573, 574.

§ 555. Any two or more corporations organized under this chapter or the laws of this State, may consolidate into a single corporation; the directors, or a majority of them, of such corporations as desire to consolidate, may enter into an agreement, signed by them, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in articles of incorporation, as herein provided, as well as the manner of converting the shares of the old corporation into the new, with such other details and provisions as are deemed necessary. Written notice of the intention to consolidate shall be mailed to the address of each stockholder of each corporation at least twenty days previous to entering into such agreement, and such notice shall be published at least two weeks in some newspaper printed and circulated in the county of its principal place of business, and the written consent of the owners of at least two-thirds of the capital stock of each corporation shall be necessary to the validity of such agreement.

Competing common carriers not to consolidate. Const., § 201. Consolidation of foreign and domestic corporation. Const., § 200; see §§ 556-558. Pools and trusts prohibited. §§ 3915-3921.

[In absence of authority in charter, legislature has no authority to provide for consolidation of one corporation with another, created for a different purpose, unless by unanimous consent of stockholders. *Botts v. T. P. R. Co.*, 88 Ky. 54; s. c., 10 S. W. Rep. 134.]

§ 556. When the agreement is signed, acknowledged and recorded in the same manner as articles of incorporation are required to be, the separate existence of the constituent corporations shall cease, and the consolidated corporations shall become a single corporation in accordance with the said agreement, and subject to all the provisions of this chapter, and other laws relating to it, and shall be vested with all the property, business, credits, assets and effects of the constituent corporations without deed or transfer, and shall be bound for all their contracts and liabilities.

[Where one corporation sells to another all its property, franchises, etc., under authority conferred by its charter, a bona fide purchaser for value takes the property free from the claims of creditors of the vendor, but have no lien upon the property, just as if it were an individual transaction. *R. R. Co. v. Grist*, 85 Ky. 619; s. c., 4 S. W. Rep. 275. When a corporation has so sold all its property, etc., and thus, in effect, been dissolved, the creditors of a corporation may enforce their demands in a court of equity, the proceeds

of the property being recorded as assets in the hands of stockholders for the payment of debts. *Id.*

Where one corporation purchases property and franchises of another, it holds the property free from the claims of creditors of vendor as if it had been an individual transaction. *Trustees v. R. R. Co.*, 94 Ky. 377; s. c., 22 S. W. Rep. 609.]

§ 557. Any action or proceeding pending by or against either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place, or the new corporation may be substituted in its place.

§ 558. If any stockholder in either corporation consolidating, who objected thereto in writing, shall, within twenty days after the agreement of consolidation has been recorded, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall, within three months thereafter, pay to him the market value of the stock at the date of consolidation; and stock so purchased shall be disposed of within the time hereinbefore provided.

[A subscriber to stock of a corporation formed under general laws held to have notice of provision of its charter authorizing its subscription to stock of other corporations. *Oil City Land Co. v. Porter*, 35 S. W. Rep. 643.]

§ 559. Any corporation may, by the consent in writing of the owners of at least two-thirds of its capital stock, change or amend any of the articles of its incorporation, and such alteration or amendment shall be signed and acknowledged by the directors, or a majority of them, and filed and recorded as articles of incorporation are required to be.

See § 574.

[Not indispensable that vote of acceptance of a charter amendment appear of record on books of corporation. Such acceptance may be inferred from acts of corporation or otherwise. *Covington v. Bridge Co.*, 10 Bush, 71.

Acceptance of amendment, like acceptance of original charter, may be proved by showing that the corporation has done corporate acts as authorized by the amendment. *Kenton Co. Ct. v. Turnpike Co.*, 10 Bush, 535.

If a corporation, by its conduct, accepts benefits of an act amending its charter, it must take it as a whole, with its burdens also. *Id.*

Amendment of charter is a part of charter as much as if incorporated in the original grant. *R. R. Co. v. L. etc., Co.*, 2 Duv. 178.

Acceptance of amendment to charter by proceeding as authorized by amendment. *Bridge Co. v. Douglass*, 12 Bush, 673.

Reservation of right to amend charter does not confer upon the legislature power to create new trustee or add to the number of trustees without their consent. *Sage v. Dillard*, 15 B. M. 356.

All charters and grants of, or to corporations, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed. *R. R. Co. v. Barren Co. Ct.*, 10 Bush, 608. Provision that corporation "shall have perpetual succession" does not plainly express an intent not to reserve power to amend or repeal. *Id.*

Charter may be amended without consent of shareholders, in so far as necessary to carry into effect purpose for which it was obtained. *Fry v. R. R. Co.*, 2 Met. 321; *Covington v. Bridge Co.*, 10 Bush, 76.

## Sales of property and franchises — Stat., §§ 560-564.

Amendment which materially changes responsibilities and duties of company, or which superadds an entirely new enterprise, may be resisted by the stockholders unless such amendments are provided for in the charter itself or in the general laws. *Fry v. R. R. Co.*, supra.]

§ 560. Any liability of corporations, or the stockholders or officers thereof, or the rights or remedies of the creditors thereof, or of persons doing or transacting business with the corporations, shall not in any way be lessened or impaired by the sale thereof, or by the increase or decrease in the capital stock of any corporation, or by the consolidation of two or more corporations, or by any change or amendment in the articles of incorporation.

§ 561. Any corporation organized under this chapter may, by the consent in writing of the owners of a majority of its shares of stock, unless otherwise provided in the articles of incorporation, or amendments thereto, close its business and wind up its affairs; and when any corporation expires by the terms of the articles of incorporation, or by the voluntary act of its stockholders, it may thereafter continue to act for the purpose of closing up its business, but for no other purpose; and it shall be the duty of the officers to settle up its affairs and business as speedily as possible; and they shall cause notice to be published, for at least once a week for four consecutive weeks, in some newspaper printed and published in the county, if any, of the fact that it is closing up its business; and all debts and demands against the corporation shall be paid in full before the officers receive anything.

See § 569.

[Dissolution of corporation does not dissolve its contracts, and creditors may enforce their claims against any property which may not have passed to bona fide assignee. *Dudley v. Price*, 10 B. M. 85.]

Corporation cannot, by its own act, dissolve itself, and thereby avoid any responsibility incurred before such attempted dissolution. *Portland, etc., Co. v. Trustees*, 12 B. M. 79. Corporation, how dissolved in Kentucky. *Id.*]

§ 562. If the franchise and property of any corporation is sold, the persons who may become the purchasers, at private sale, or under the judgment of the court, may organize a corporation for the construction, operation and management of the same; and such corporation, when organized, shall have the same rights, privileges and franchises as have been granted to or acquired by the corporation purchased; and shall be subject to all the limitations, restrictions and liabilities imposed upon it; and, in addition thereto, shall be subject to all the provisions of this chapter. Such corporation shall be formed by articles of incorporation executed by the purchaser and his associates, and which shall, in addition to the requirements of section two of this article, set forth a description of the property sold, and the decree under

which the sale was made, if it was sold under a judgment, or if not, the deed conveying the property; the amount paid, or to be paid, and to and by whom, and such other statements as may be deemed necessary. The articles shall be signed by the purchaser and his associates, if any, and a copy thereof recorded in the office of the secretary of State; and if a railroad, in the office of the railroad commission; and when a certificate of such fact is delivered to the purchaser, the corporation shall be deemed to be organized, and shall have all the rights, powers and privileges, and be subject to all restrictions, limitations and liabilities of other similar corporations organized under this chapter.

See Const., § 293. Statutes, § 563.

[Sale of the franchises and property under a decree to satisfy a mortgage does not pass to the purchaser debts due the corporation, nor destroy the corporate existence of the company. *Smith v. Gower*, 2 Duv. 19.]

As to liability of corporation for acts of its vendors where there has been transfer of corporate privileges, see *Stickley v. R. R. Co.*, 93 Ky. 323; s. c., 20 S. W. Rep. 261.]

§ 563. Sales of the property and franchises of corporations that may be sold under decree of court shall be made after such notice of the time and place as the court may deem proper; and if such sales are made in the foreclosure of one or more mortgages or deeds of trust, the court may order such sale to be made for the whole amount of the outstanding bonds and interest secured by such deeds of trust or mortgage; or if the property and franchises will produce so much, then for the amount of interest due under said deed or deeds of trust or mortgage, or any of them, subject to the payment by the purchaser of the outstanding bonds and interest secured thereby as they become due; and in the latter event may, by proper orders, secure the assumption thereof by the purchaser; but where a sale shall be ordered to be made, subject as aforesaid, the court shall direct the officer making such sale, in the event that the property and franchises offered do not sell for enough to pay the amount aforesaid, to sell the same free from incumbrances. Sales under this section shall be made on such credits as the court may deem proper.

See § 562.

§ 564. Any corporation, organized under this law, may divide its shares into classes, such as preferred, common and deferred shares, or as may be otherwise designated, and it may give to each of the several classes such priority of right in the payment of dividends, and in the redemption of the shares, as may be prescribed in the rules and regulations adopted by the shareholders. But no preferred stock shall be issued except for cash or its equivalent, nor for less than the

par value of the shares; and the holders thereof shall be entitled to receive quarterly, semi-annual or annual dividends thereon at such rate as may be prescribed in its issue, payable before any dividends shall be declared on the common stock, which shall be stated in the certificates representing the preferred and common stock respectively. On the dissolution of the company, voluntarily or otherwise, the holders of the preferred stock shall be entitled to have their shares redeemed at par before any distribution of any part of the assets of the company shall be made to the holders of common stock.

§ 565. Any corporation organizing under this chapter shall forfeit all rights, privileges and franchises obtained thereunder, if it shall fail, for two years after its organization, to commence in good faith the business, or to promote the objects or purposes for which it was organized; but the rights, privileges or franchises shall not be forfeited by the failure to elect officers or hold meetings at the time specified.

Organization complete, when. § 542.

§ 566. No corporation organized under this chapter shall be permitted to set up or rely upon the want of legal organization as a defense to any action against it; nor shall any person transacting business with such corporation, or sued for injury done to its property, be permitted to rely upon such want of legal organization as a defense.

Organization. §§ 539-542.

[Person dealing with a corporation must, at his peril, take notice of its charter or articles of incorporation. *Bank v. Milling Co.*, 95 Ky. 97; s. c., 23 S. W. Rep. 675.

Generally one dealing with a corporation is not permitted to deny its existence. *R. R. Co. v. Leavell*, 16 B. M. 363. And it is very questionable whether one who participated as a stockholder in election of directors may. *Id.*]

§ 567. No corporation shall engage in business other than that expressly authorized by its articles of incorporation or amendments thereto; nor shall any corporation, directly or indirectly, engage in or carry on in any way the business of banking, or insurance of any kind, unless it has become organized under the laws relating to banking and insurance; nor shall any corporation hold or own any real estate, except such as may be necessary and proper for carrying on its legitimate business, for a longer period than five years under penalty of escheat.

Business unauthorized by charter prohibited. Const., § 192. Powers of corporation. See § 542 (6).

§ 568. No corporation shall issue stock or bonds except for an equivalent in money paid or labor done, or property actually received and applied to the purposes for which such corporation was created, and

neither labor nor property shall be received in payment of stock or bonds at a greater value than the market price at the time said labor was done or property delivered; and all fictitious increase of stock shall be void.

See §§ 543, 544.

§ 569. Whenever any corporation has failed, or shall fail, to perform or comply with any requirement or provision of its charter under which it does business in this State, or shall be guilty of an abuse or misuse of its corporate powers, privileges or franchises, or shall become detrimental to the interest and welfare of the commonwealth or its citizens, it shall be the duty of the attorney-general of the State to institute such proceedings as may be proper and necessary to have forfeited and revoked the charter, powers, franchises and privileges of such corporation.

See Const., § 205.

[General assignment of all property and effects in trust for the payment of debts will not, of itself, have the legal effect of producing dissolution of a corporation. *Ins. Co. v. Page*, 17 B. M. 457.]

Courts of equity have no power to revoke or annul acts of incorporation. *F. F. T. P. Co. v. Jewell*, 8 B. M. 142. And no jurisdiction to declare a forfeiture of charter of a corporation or inquire into the misfeasance or non-feasance of its officers for that purpose. *Chambers v. Baptist Soc.*, 1 B. M. 216.

That charter of a corporation has been forfeited, must be ascertained by a direct proceeding, and not collaterally. But that it has expired by its terms may be shown by the charter. *Bank v. Trimble*, 6 B. M. 601.

A charter privilege is not to be regarded as forfeited in a collateral proceeding unless there has been a forfeiture judicially pronounced by a proper proceeding. *Harrison v. R. R. Co.*, 9 B. M. 470.

The order of a chancellor placing the books, papers and assets of a corporation in the hands of a commission to wind up its affairs, operated to suspend its corporate functions, although there may have been no direct proceedings for the forfeiture of its charter. *Sanford v. Bank*, 1 Met. 109.]

§ 570. No law shall be passed for the benefit of, or in the interest of, any corporation heretofore created or organized by or under the laws of this State or any other State; nor shall any corporation avail itself of the provisions of this chapter, unless such corporation shall have previously, by a resolution adopted by its board of directors, and filed in the office of the secretary of this State, accepted the provisions of the Constitution of this State; and such resolution, or a certified copy thereof, shall be evidence for and against such corporation.

See Const., §§ 3, 190, 191, and notes.

§ 571. All corporations formed under the laws of this or any other State, and carrying on any business in this State, shall at all times have one or more known places of

## Designation of agent; suits in federal courts — Stat., §§ 572, 573.

business in this State, and an authorized agent or agents thereat, upon whom process can be served; and it shall not be lawful for any corporation to carry on any business in this State until it shall have filed in the office of the secretary of State a statement, signed by its president or secretary, giving the location of its office or offices in this State, and the name or names of its agent or agents thereat upon whom process can be served; and when any change is made in the location of its office or offices, or in its agent or agents, it shall at once file with the secretary of State a statement of such change; and the former agent shall remain agent for the purpose of service, until statement of appointment of the new agent is filed; and if any corporation fails to comply with the requirements of this section, such corporation, and any agent or employe of such corporation, who shall transact, carry on or conduct any business in this State for it, shall be severally guilty of a misdemeanor, and fined not less than one hundred nor more than one thousand dollars for each offense.

See Const., § 194.

[One State has no power to charter a company to act within the jurisdictional limits of another State. *Atterbury v. Knox*, 4 B. M. 90; *Ins. Co. v. Comm.*, 5 Bush, 75.

Every power of a corporation depends for its validity upon laws of sovereignty in which it is exercised; and corporations created in one State can make no valid contract in another without its sanction, express or implied. *Id.*; *Gill v. Mining Co.*, 7 Bush, 635. And when such sanction is obtained, the fact that some law or constitutional provision of such State is in conflict with an amendment to the charter of the corporation cannot destroy validity of amendment. *Covington v. Bridge Co.*, 10 Bush, 78.

Though a corporation must live and have its being in that State only in which it was created, it does not follow that its existence will not be recognized in other places. *Martin v. R. R. Co.*, 7 Bush, 123.

Rights secured to corporations of other States by the Federal Constitution. *Comm. v. Milton*, 12 B. M. 219; *Ins. Co. v. Co.*, 5 Bush, 76.

Foreign corporations entitled to sue in Kentucky courts. *Pendleton v. Bank*, 1 Mon. 175. And to contract in Kentucky, but the contract or suit must not be repugnant to the local law. *Bank v. Trimble*, 6 B. M. 604. But not where the charter of the company has by its terms expired. *Id.*

Not necessary in action by foreign corporation, on trial of plea of non-assumpsit, to produce its charter or otherwise prove its existence. *Taylor v. Bank*, 7 Mon. 585.

Corporation cannot be sued and its property attached on the ground that it is a foreign corporation. *Martin v. R. R. Co.*, 7 Bush, 118.

Citizens of other States exercising corporate powers in Kentucky, granted by other States, are liable to taxation in Kentucky. *Comm. v. Milton*, 12 B. M. 218.

A corporation cannot have two domiciles at same time. It obtains residence only by the legislative authority which fixes the requisites of residence. *Bridge Co. v. Woolley*, 78 Ky. 525. A corporation created in Ohio is properly sued as a non-resident. *Id.*

In case of railroad corporation, the residence of its president, if there be one, in the State, or, if not, its vice-president, if there be one in the State, must be treated as the residence of the corporation in determining jurisdiction of de-

fendant. *Harper v. Newport, etc., Co.*, 90 Ky. 359; *s. c.*, 14 S. W. Rep. 346.

Since above section does not declare any special jurisdiction for the recovery of a penalty, nor that suit shall be prosecuted by attorney-general, its recovery is to be regulated by general laws, and may be by indictment or by action in the name of the commonwealth. *Co. v. B. & L. Assn.*, 30 S. W. Rep. 626.

A non-resident corporation doing business in this State may be sued here as other litigants, when properly summoned. *Chesapeake v. Cowherd*, 96 Ky. 113.]

§ 572. If any foreign corporation shall, without the consent of the adverse party, remove to a Federal court any action pending against it in any court of this State, or institute an action against a citizen of this State in a Federal court of this State, such action on the part of the corporation shall forfeit its right to transact or carry on any business in this State, and such corporation, and any officer, agent or employe thereof, who shall thereafter transact or engage in any business or employment for such corporation in this State, shall be severally guilty of a misdemeanor, and, upon indictment and conviction in the circuit court of any county in which such corporation, or any officer, agent or employe thereof, transacts or engages in any business, be fined for each offense not less than five hundred nor more than one thousand dollars.

[Above section does not authorize an action to recover fine imposed before an indictment or conviction of the corporation. *Comm. v. Min. Co.*, 30 S. W. Rep. 611.]

Is not this section unconstitutional? *Barron v. Burnside*, 121 U. S. 186; *s. c.*, 7 Sup. Ct. Rep. 931.]

§ 573. The provisions of all charters and articles of incorporation, whether granted by special act of the general assembly, or obtained under any general incorporation law, which are inconsistent with the provisions of this chapter concerning similar corporations, to the extent of such conflict, and all powers, privileges or immunities of any such corporation which could not be obtained under the provisions of this chapter, shall stand repealed on September 28, 1897; and if the officers, managers or agents of such corporations shall, after said date, exercise any powers, privileges or immunities repealed by this section, or inconsistent with the provisions of this chapter, relating to similar corporations, or which could not be obtained under this chapter, the officer, manager or agent so offending, and the corporation for which he acts, shall each be guilty of a misdemeanor, and fined for each offense not less than one hundred nor more than one thousand dollars, and upon the conviction of the corporation, the trial jury may, at their discretion, direct the forfeiture of its charter or articles of incorporation, in which case the court shall so adjudge. After the 28th day of September, 1897, the provisions of this chapter shall apply to all corporations created or organized under the laws of this State, if said pro-

Receivers; false statements; entries, etc.—Stat., §§ 574-576, 616, 1175, 1186, 1187.

visions would be applicable to them if organized under this chapter.

See § 550.

§ 574. The charter or articles of incorporation of any corporation heretofore created or organized under or by the laws of this State may, after such corporation has accepted, as herein provided, the provisions of the Constitution, be amended in the manner provided for the amendment of the articles of incorporation of corporations organized under this chapter and the laws relating to such corporations.

See Const., §§ 190, 191; Statutes, § 559.

§ 575. The word "directors" used in this article includes managers or trustees.

Duties and liabilities of directors. §§ 548-551.

§ 576. Every corporation organized under the laws of this State, and every corporation doing business in this State, shall, in a conspicuous place, on its principal place or places of business, in letters sufficiently large to be easily read, have painted or printed the corporate name of such corporation, and immediately under the same, in like manner, shall be printed or painted the word "Incorporated." And immediately under the name of such corporation, upon all printed or advertising matter used by such corporation, shall appear in letters sufficiently large to be easily read the word "Incorporated." Any corporation which shall fail or refuse to comply with the provisions of this section shall be subject to a fine of not less than one hundred dollars, and not more than five hundred dollars.

Corporate name. See § 542.

#### ARTICLE III. APPOINTMENT OF RECEIVERS.

Sec. 616. Receiver; when may be appointed for a corporation.

§ 616. The secretary of State, upon becoming satisfied that any bank or corporation has become insolvent, or that its capital has become, and is permitted to remain, impaired, or that it has violated any of the provisions of the law under which it was organized, may, with the approval of the attorney-general, apply to the circuit court, or judge thereof in vacation, of the county in which the bank or corporation is located, for the appointment of a receiver, who, under the direction of the court or judge, shall take possession of books, papers and assets of every description, and all business of the bank or corporation, and collect all collectible debts and demands, and sell or compound, under the order of the court, all bad debts, and sell all the real and personal property of the bank or corporation, on such

terms as the court may direct. The receiver shall be resident of the county in which the action is pending, and give bond, with good surety, to be approved by the court, and settle his accounts under the general laws.

#### CHAPTER XXXVI.

##### Crimes and Punishments.

##### ARTICLE III. FELONIES.

Sec. 1175. Swearing falsely to statement required of corporation.

1186. Officer of corporation altering or destroying books or writings.

1187. Counterfeiting corporate seal.

§ 1175. If any certificate or written statement be made or written notice given, by the officers of any company incorporated by the laws of this commonwealth, which is required to be verified on oath, and is so sworn to, be false in any material part, each person who swore to the same, knowing it to be false, shall be guilty of false swearing, and, on conviction, be confined in the penitentiary not less than one nor more than five years.

Liability of officers. §§ 549-551.

§ 1186. If any officer or employe of any joint-stock company, bank or corporation shall, with the intention of cheating or defrauding the joint-stock company, bank or corporation, or any person doing business with it, erase, mutilate or alter any book or paper or evidence of debt, or any part thereof, owned by or in the custody or under the control of the joint-stock company, bank or corporation, or shall destroy the same, or shall make any false entry, or omit to make an entry in any such book or paper, he shall be confined in the penitentiary not less than two nor more than ten years.

See §§ 549-551.

§ 1187. If any person shall fraudulently make or counterfeit any instrument for stamping an impression in the figure or likeness of the seal \* \* \* of any corporation or officer thereof, \* \* \* or if he have in his possession any such instrument, and conceal the same, knowing it to be falsely made and counterfeited, or use the false impression made by such instrument and utter and publish it as true, knowing it to be falsely made and counterfeited, he shall be confined in the penitentiary not less than five nor more than fifteen years.

#### CHAPTER XXXVIII.

##### Currency.

Sec. 1391. Corporation forbidden to loan money or discount bills, unless so authorized.

§ 1391. No corporation, not expressly authorized by law of this State, shall loan



Charters subject to repeal; pools; trusts, etc.—Stat., §§ 1987, 3915–3917.

money, discount any evidence of debt, or deal in the buying and selling of exchange. Every person acting as an officer, servant or agent of a corporation who shall aid such corporation in a violation of this section shall, for every such offense, be fined from fifty to five hundred dollars. All contracts made in violation of this section shall be void, and all money paid by way of interest, discount, or for difference of exchange, in violation thereof, may be recovered back by the party paying, or his creditor.

Powers of a corporation defined. § 542.

## CHAPTER LIX.

### General Assembly.

Sec. 1987. Charters granted since 1856 subject to repeal.

§ 1987. All charters and grants of or to corporations, or amendments thereof, enacted or granted since the fourteenth of February, one thousand eight hundred and fifty-six, and all other statutes, shall be subject to repeal at the will of the general assembly, unless a contrary intent be therein plainly expressed: Provided, That whilst privileges and franchises so granted may be repealed, no repeal shall impair other rights previously vested.

See Const., §§ 3, 19.

[A charter provision that the corporation "shall have perpetual succession" does not plainly express an intent that the legislature shall not have power to amend the charter. *R. R. Co. v. County*, 10 Bush, 604.

The purpose of above section was to secure the rights of beneficiaries and others that had vested under the charter before its amendment or repeal, and does not affect the mere power to repeal the franchise. *Griffin v. Ins. Co.*, 3 Bush, 592.

The legislature may create corporations whereby certain liabilities and duties are assumed by the corporation, in consideration of which, rights and privileges are granted that no legislature, without the consent of the parties, can impair or diminish. *R. R. Co. v. Comm.*, 10 Bush, 43; see, also, *Franklin Co. Ct. v. Bank*, 87 Ky. 370; s. c., 9 S. W. Rep. 212.

Although the right to amend a charter may be reserved, it does not confer power upon the legislature to take from the corporators control of corporate property, nor to change the objects of the corporation. *Orr v. County*, 81 Ky. 593; see, also, *City v. University*, 15 B. M. 642; *Sage v. Dillard*, 15 id. 340.]

## CHAPTER LXXXIX.

### Municipal Corporations.

Sec. 3243. Stock in corporation voted by mayor.

§ 3243. Any stock owned or held by the city in any corporation shall, in all stockholders' meetings, be voted by the mayor under the direction of the common council.

## CHAPTER CI.

### Pools, Trusts and Conspiracies.

Sec. 3915. Pools, trusts and conspiracies; defined and prohibited.

3916. Trust certificates; when sale of, unlawful.

Sec. 3917. Penalties imposed on corporations and officers.

3918. Contract in violation of law void.

3919. Charter of corporation forfeited upon conviction.

3920. Judges to charge grand jury concerning.

3921. Appeals; how regulated.

§ 3915. That if any corporation under the laws of Kentucky, or under the laws of any other State or country, for transacting or conducting any kind of business in this State, or any partnership, company, firm or individual, or other association of persons, shall create, establish, organize or enter into, or become a member of, or a party to, or in any way interested in any pool, trust, combine, agreement, confederation or understanding with any other corporation, partnership, individual or person, or association of persons, for the purpose of regulating or controlling or fixing the price of any merchandise, manufactured articles or property of any kind, or shall enter into, become a member of, or party to, or in any way interested in any pool, agreement, contract, understanding, combination or confederation, having for its object the fixing, or in any way limiting the amount or quantity of any article of property, commodity or merchandise to be produced or manufactured, mined, bought or sold, shall be deemed guilty of the crime of conspiracy, and punished therefor as provided in the subsequent sections of this act.

See Const., § 198.

§ 3916. It shall not be lawful for any corporation to issue or to own, have or sell any trust certificates or stocks, or for any corporation's agent, officer or employee, agent or director, or any corporation to enter into, either verbally or in writing, any combinations, contract, agreement or understanding with any person or persons, corporation or corporations, or with any director, agent or officer thereof, the purpose or effect of which combination, contract, agreement or understanding would be to place the management, control or any part of the business of such combination or association, or the manufactured product thereof, in the hands or under the control, in whole or in part, of any trustee or trustees, or agents, or any person whatever, with the intent, or to have the effect to limit, fix, establish or change the price of the production or sale of any article of property or of commerce, or to prevent, restrict, or in any way diminish the manufacture or output of any such article or property.

§ 3917. If any corporation, company, firm, partnership or person, or association of persons, shall, by court of competent jurisdiction, be found guilty of any violation of any of the provisions of this act, such guilty party shall be punished by a fine of not less than five hundred dollars, and not more than five thousand dollars. Any president, mana-

ger, director or other officer or agent, or receiver of any corporation, company, firm, partnership or any corporation, company, firm or association, or member of any corporation, firm or association, or any member of any company, firm or other association, or any individual found, by a court of competent jurisdiction, guilty of any violation of this act shall be punished by a fine of not less than five hundred dollars or more than five thousand dollars, or may be imprisoned in the county jail not less than six months nor more than twelve months, or may be both so fined and imprisoned in the discretion of the court or jury trying the case.

[A corporation is liable to indictment whenever offense consists either of misfeasance or nonfeasance of duty to the public. If penalty for offense be both fine and imprisonment, the statute is inoperative as to imprisonment, from the nature of the offender. Comm. v. A. & M. Assn., 92 Ky. 197; s. c., 17 S. W. Rep. 442.]

§ 3918. Any contract or agreement or understanding in violation of the provisions of the preceding sections of this act shall be null and void; and any purchasers of property or article, or of any commodity, from any individual, firm, company or corporation transacting business contrary to the preceding sections of this act, shall not be liable for the price or payment of such article or commodity or property, and may plead and rely on this act as a complete defense to any suit for such price or payment.

§ 3919. If any corporation created or organized by or under the laws of this State shall be indicted and convicted for any violation of any of the provisions of this act, such indictment, trial and conviction in any court of competent jurisdiction shall have the effect to forfeit the charter of such corporation without any further proceedings on the subject of the forfeiture of its charter; but any corporation whose charter is so forfeited shall have the right of appeal as is provided in other cases, and the filing of the bond as is required by law shall suspend the judgment of forfeiture until the same is passed upon by the court to which the case is appealed.

§ 3920. It shall be the duty of the circuit judges, and other judges of similar jurisdiction in this State, to give the provisions of this act in charge to the grand juries at each term of their courts.

§ 3921. The provisions of the Code of Practice regulating appeals in other cases shall apply to appeals under this act.

## CHAPTER CVIII.

### Revenue and Taxation.

#### ARTICLE III. ASSESSMENT OF CORPORATIONS.

Sec. 4077. Franchise taxed; board of valuation to determine where tax shall be paid.

4078. Franchise; reports by corporations to determine value.

Sec. 4079. Franchises; reports if lines extend beyond State or county.

4080. Foreign corporations; value of franchise, how determined.

4081. Franchise of carrier, when taxed in each district through which line passes.

4082. Franchise of persons engaged in certain business; how value determined.

4083. Notice to corporations of value of franchise; board may change.

4084. Value of franchise to be reported to counties entitled to tax.

4085. Property assessed in name of corporation; penalty for failure to report; stockholders, when exempt.

4086. Corporations to pay taxes as individual.

4087. Penalty for failure of corporation to make reports.

4088. Stockholders exempt from tax on stock when corporation pays.

4089. Receiver of corporation to report.

4090. Corporation failing to report; board shall fix value.

4091. Taxes except of banks and trust companies, when due; penalty.

§ 4077. Every railway company or corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The auditor, treasurer and secretary of State are hereby constituted a board of valuation and assessment, for fixing the value of said franchise, except as to turnpike companies, which are provided for in section four thousand and ninety-five of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the board of valuation and assessment, and for the discharge of such other duties as may be imposed on them by this act. The auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require.

See Const., §§ 3, 174; Statutes, § 4226.

[The property of corporations is subject to assessment for street improvement. Ludlow v. R. R. Co., 78 Ky. 357; Zable v. Orphans' Home, 92 id. 89; s. c., 17 S. W. Rep. 212.

Kentucky has jurisdiction over all kinds of property, and the right to the soil under the water to low-water mark on the northwest side of

## Franchise tax — Stat., §§ 4078-4080.

the Ohio river. Therefore bridge over said river is entitled to the protection of the laws of Kentucky, and is bound to pay revenue to the State. *Bridge Co. v. Louisville*, 81 Ky. 189.

Property of water companies, like railroads and turnpikes, cannot be seized by collecting officers and sold, so as to deprive the public of its benefits. *Water Co. v. Comm.*, 89 Ky. 244; s. c., 12 S. W. Rep. 300; *Water Co. v. Hamilton*, 81 Ky. 517. So also of gas companies. *Gas L. Co. v. Covington*, 84 Ky. 95.

Where a railroad charter contains an immunity from taxation, it is only a personal privilege, pertaining alone to the original company, and cannot be transferred. *Comm. v. R. R. Co.*, 81 Ky. 572.

There can be no question as to the liability of railroads for county taxes. *R. R. Co. v. Comm.*, 85 Ky. 198; s. c., 3 S. W. Rep. 139. A provision of statutes as to proceedings against taxpayers who have failed to list their property with the assessor are applicable to railroads. *Id.*

The mere fact that a corporation is required to pay into the State treasury, as taxes, a certain sum upon each share of its capital stock, does not manifest an intention to exempt it from municipal taxation. *Ins. Co. v. Covington*, 86 Ky. 214; s. c., 5 S. W. Rep. 461.

The capital stock and the shares of capital are distinct things, and both may be taxed. So also the franchise, surplus earnings and real estate are things distinct from the capital stock and from each other, and the State may tax the corporation under each of these heads without being guilty of imposing double taxation. *Franklin Co. Ct. v. Bank*, 87 Ky. 371; s. c., 9 S. W. Rep. 212.

Statute requiring license tax of express companies doing business between this State and other States is a regulation of interstate commerce, and in violation of the Federal Constitution. *Comm. v. Smith*; *Comm. v. Express Co.*, 92 Ky. 38; s. c., 17 S. W. Rep. 187. Also, tax upon telegraph companies of one dollar per mile for the line of poles and first wire. *Id.*

An exemption from taxation in charter of a railroad company is a personal privilege, and does not follow the title to the property. *Comm. v. R. Co.*, 93 Ky. 430; s. c., 20 S. W. Rep. 383. Lease of railroad property for a thousand years was such a transfer as defeated exemption from taxation. *Id.*

§ 4078. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies whose statements shall be filed as hereinafter required by section four thousand and ninety-two of this article, shall annually, between the fifteenth day of September and first day of October, make and deliver to the auditor of public accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the auditor may prescribe, showing the following facts, viz.: The name and principal place of business of the corporation, company or association; the kind of business engaged in; the amount of capital stock, preferred and common; the number of shares of each; the amount of stock paid up; the par and real value thereof; the highest price at which such stock was sold at a bona fide sale within twelve months next before the fifteenth day of September of the year in which the statement is required to be made; the amount of surplus fund and undivided profits, and the value of all other assets; the

total amount of indebtedness as principal, the amount of gross or net earnings or income, including interest on investments, and incomes from all other sources for twelve months next preceding the fifteenth day of September of the year in which the statement is required; the amount and kind of tangible property in this State, and where situated, assessed, or liable to assessment in this State, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, and such other facts as the auditor may require.

§ 4079. Where the line or lines of any such corporation, company or association extend beyond the limits of the State or county, the statement shall, in addition to the other facts hereinbefore required, show the length of the entire lines operated, owned, leased or controlled in this State, and in each county, incorporated city, town or taxing district, and the entire line operated, controlled, leased or owned elsewhere. If the corporation, company or association be organized under the laws of any other State or government, or organized and incorporated in this State, but operating and conducting its business in other States as well as in this State, the statement shall show the following facts, in addition to the facts hereinbefore required: The gross and net income or earnings received in this State and out of this State, on business done in this State, and the entire gross receipts of the corporation, company or association in this State and elsewhere during the twelve months next before the fifteenth day of September of the year in which the assessment is required to be made. In cases where any of the facts above required are impossible to be answered correctly, or will not afford any valuable information in determining the value of the franchises to be taxed, the said board may excuse the officer from answering such questions: Provided, That said board, from said statement, and from such other evidence, as it may have, if such corporation, company or association be organized under the laws of this State, shall fix the value of the capital stock of the corporation, company or association, as provided in the next succeeding section, and from the amount thus fixed shall deduct the assessed value of all tangible property assessed in this State, or in the counties where situated. The remainder thus found shall be the value of its corporate franchise subject to taxation as aforesaid.

§ 4080. If the corporation, company or association be organized under the laws of any other State or government, except as provided in the next section, the board shall fix the value of the capital stock as hereinbefore provided, and will determine from the amount of the gross receipts of such corporation, company or association in this State and elsewhere, the proportion which the gross receipts in this State, within twelve months next before the fifteenth day

of September of the year in which the assessment was made, bears to the entire gross receipts of the company, the same proportion of the value of the entire capital stock, less the assessed value of the tangible property assessed, or liable to assessment, in this State, shall be the correct value of the corporate franchise of such corporation, company or association for taxation in this State.

Consolidation of foreign and domestic corporations. § 200.

[Citizens of other States exercising corporate powers in Kentucky, granted by other States, are liable to taxation in Kentucky. *Comm. v. Milton*, 12 B. M. 218.]

§ 4081. If the corporation organized under the laws of this State or of some other State or government be a railroad, telegraph, telephone, express, sleeping, dining, palace or chair-car company, the lines of which extend beyond the limits of this State, the said board will fix the value of the capital stock as hereinbefore provided, and that proportion of the value of the capital stock, which the length of the lines operated, owned, leased or controlled in this State, bears to the total length of the lines owned, leased or controlled in this State, and elsewhere, shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district through, or into which, such lines pass, or are operated, in the same proportion that the length of the line in such county, city, town or district bears to the whole length of lines in the State, less the value of any tangible property assessed, or liable to assessment, in any such county, city, town or taxing district.

§ 4082. Whenever any person or association of persons not being a corporation nor having capital stock, shall, in this State, engage in the business of any of the corporations mentioned in the first section of this article, then the capital and property, or the certificates or other evidences of the rights or interests of the holders thereof in the business or capital and property employed therein, shall be deemed and treated as the capital stock of such person or association of persons for the purposes of taxation and all other purposes under this article, in like manner as if such person or association of persons were a corporation.

§ 4083. It shall be the duty of the auditor, immediately after fixing such values by said board, to notify the corporation of the fact; and all such corporations shall have thirty days from the time of receiving the notice to go before such board and ask a change of the valuation, and may introduce evidence, and the chairman of the board is hereby authorized to summon and swear witnesses, and after hearing such evidence the board

may change the valuation as it may deem proper, and the action of the board shall be final.

§ 4084. The auditor shall, at the expiration of thirty days after the final determination of such values, certify to the county clerk of the counties, when any portion of the corporate franchise of any such corporation, company or association shall be liable to local taxation as herein provided, the amount thereof liable for county, city, town or district tax; and such certificate shall be by each county clerk filed in his office, and be by him certified to the proper collecting officer of the county, city, town or taxing district for collection.

§ 4085. The property of all corporations, except where herein differently provided, shall be assessed in the name of the corporation in the same manner as that of a natural person, except that, when legally called on, the chief officer shall report a full statement of the property of such corporation for taxation, and, for a failure, shall be subject to the penalties in this article provided; and so long as said corporation pays the taxes on all its property of every kind, the individual stockholders shall not be required to list their shares in said corporation.

§ 4086. All corporations and other persons who are required to make reports to the auditor of public accounts shall pay all the taxes due the State from them into the treasury at the same time, and shall be liable for and pay the same rate of interest and penalties as defaulting individuals, except where otherwise specially provided.

§ 4087. Any corporation, or officer thereof, willfully failing or refusing to make reports as required by this chapter shall be deemed guilty of a misdemeanor, and for each offense shall be fined one thousand dollars, and fifty dollars for each day the same is not made after October first of each year.

§ 4088. The individual stockholders of the corporation which are, by this article, required to report and pay taxes upon the corporate franchise shall not be required to list their shares in such companies so long as the corporation pays the taxes on the corporate property and franchises as herein provided.

Under our statutes corporations are required to list their property for taxation, and stockholders are exempt from taxation upon their stock. And the fact that a corporation has failed to list its property, or that its property is situated in another State, and, therefore, not subject to taxation here, does not deprive stockholder of this exemption. *Whitaker v. Brooks*, 90 Ky. 68; s. c., 13 S. W. Rep. 355. To constitute double taxation property must be twice taxed within the same jurisdiction. To tax property here which has been taxed in another State does not constitute double taxation. *Id.*

§ 4089. Should any corporation required to make the report as hereinbefore provided be in the hands of, or under the control of, a receiver or other person, it shall be the duty

Franchise tax — Stat., §§ 4090, 4091, 4226. Service of summons — Civ. Code, § 51.

of such receiver or other person to make the returns and valuations as hereinbefore required.

§ 4090. Should any corporation fail to make the reports as required herein on or before the first day of October of each year, the said board shall proceed to ascertain the facts and values as required by this article, in such manner and by such means as it deems proper, at the cost of the company failing to make the report, and shall fix the values of the corporate franchise liable for taxation as aforesaid, and the corporation shall be taxed accordingly.

§ 4091. All taxes assessed against any corporation, company or association under this article, except banks and trust companies, shall be due and payable thirty days after notice of same has been given to said corporation, company or association by the auditor; and every such corporation, company or association failing to pay its taxes, after receiving thirty days' notice, shall be deemed delinquent, and a penalty of ten per cent. on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent. per annum; any such corporation, company or association failing to pay its taxes, penalty and interest, after

becoming delinquent, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined fifty dollars for each day the same remains unpaid, to be recovered by indictment or civil action, of which the Franklin circuit court shall have jurisdiction.

#### ARTICLE IX. TAX ON ORGANIZATION.

Sec. 4226. Amount of organization tax, when due; effect of failure to pay.

§ 4226. Every corporation which may be incorporated by or under the laws of this State, having a capital stock divided into shares, shall pay into the State treasury one-tenth of one per centum upon the amount of capital stock which such corporation is authorized to have, and a like tax upon any subsequent increase thereof. Such tax shall be due and payable on the incorporation of the company and on the increase of the capital thereof, and no such corporation shall have or exercise any corporate powers until the tax shall have been paid; and upon payment, they shall file a statement thereof with the secretary of State.

Corporation not deemed organized until this tax is paid. § 542.

## CIVIL CODE.

### TITLE IV. COMMENCEMENT OF A CIVIL ACTION.

#### CHAPTER II.

##### Service of Summons.

- Art. 1. Actual service.
2. Constructive service.

#### ARTICLE I. ACTUAL SERVICE.

Sec. 51. Service of summons on counties and corporations.

§ 51. (3.) In an action against a private corporation the summons may be served, in any county, upon the defendant's chief officer, or agent, who may be found in this State; or it may be served in the county wherein the action is brought upon the defendant's chief officer or agent who may be found therein. (Or if the defendant operate a railroad, it may be served upon the defendant's passenger or freight agent stationed at or nearest to the county seat of the county in which the action is brought. [Act 1893, p. 588.]

(4.) (In every action [Act 1893, p. 1207]) against a common carrier, the summons may be served, in any county, upon the defendant's chief officer or agent; or it may be served in the county wherein the action is brought, upon the defendant's chief officer or agent who resides therein; or, if the defendant operate a railroad, it may be served

upon defendant's passenger or freight agent station at, or nearest to, the county seat of the county in which the action is brought.

[Where the defendant corporation is the owner or the lessee of a railway in this State, or the builder or constructor of a railway in this State, and cannot be served with summons under existing laws, then the person or corporation controlling or operating the railway so owned or built or constructed shall be treated as the representative of the defendant, and service of summons upon such of the officers or agents of the persons or corporation operating or controlling the railway as would be required if such controller or operator were the party sued, shall be a sufficient service of summons upon the defendant to the action; but such service must be twenty days before the commencement of the term, and the facts authorizing the same must be made to appear by the return of the officer or the affidavit of some person other than the plaintiff in the action, and the appearance of the defendant to move for the quashal of the service of the summons shall operate as an appearance for all the purposes of the action, and the same shall stand for trial at the succeeding term of the court, in case the motion to quash shall prevail. Act of May 10, 1890.]

In actions against the individual residing in another State, or a partnership, association, or joint-stock company, the members of which reside in another State, engaged in business in this State, the summons may be served on the manager, or agent of, or person in charge of such business in this State in the county where the business is carried on, or in the county where the cause of action occurred. Act 1893, p. 911.

Service of process against a corporation must be upon its head officer unless charter otherwise directs. *De Wolfe v. Mallett*, 3 Dana, 217.

Delivery of summons to president, he not being a party to the action, was but service upon com-

Service of summons; pleading; attachment — Civ. Code, §§ 57, 58, 72, 167, 194.

pany itself. *Bridge Co. v. Douglass*, 12 Bush, 711.

A non-resident corporation operating a railroad in this State, properly summoned by service of process on its local ticket agent in county in which suit is brought, he being the only agent of the carrier in the county, and managing agent of the department of which he had control, and, therefore, "chief officer or agent" in the county within meaning of above section. *Chesapeake v. Cowherd*, 96 Ky. 113.]

## ARTICLE II. CONSTRUCTIVE SERVICE.

Sec. 57. When constructive service is allowed, and how made.

58. Same.

### § 57. If the defendant —

1. Be a corporation having no agent in this State, known to the plaintiff, upon whom a summons can be lawfully served; or,

7. \* \* \* The clerk shall, subject to the provisions of section 58, make upon the petition an order warning the defendant to defend the action on the first day of the next term of the court, which does not commence within sixty days after the making of the order.

§ 58. The clerk shall not make such warning order upon any of the grounds mentioned in subsections 1, 2, 3, 4 and 7, of section 57, except upon an affidavit of the plaintiff; or of his agent or attorney, if he be absent from the county; or of his guardian, curator, committee, or next friend, if he be under disability; or of the attorney of either of them, if absent from the county, stating the ground of the application for such order.

2. Nor shall the clerk make such order on any of the grounds mentioned in subsections 1, 2, and 4 of section 57, unless the affidavit also state in what country the defendant, or, if the defendant be a corporation, in what country its chief officer or agent resides or may be found, and the name of the place wherein a post-office is kept nearest to the place where the defendant or its chief officer or agent, resides or may be found; or unless the affidavit state the affiant's ignorance of such of those facts as he does not know.

3. Nor shall the clerk make such order upon an affidavit of an agent or attorney of the plaintiff, stating any of the grounds mentioned in subsections 1, 2, 4 and 7, of section 57, unless the affidavit state the affiant's belief that the plaintiff is ignorant of such of the facts as are unknown to the affiant.

6. An affidavit made pursuant to the foregoing provisions of this section, unless it be controverted by the defendant's affidavit, shall be sufficient evidence of the facts therein stated for the support of the action as well as of the warning order.

## TITLE V. THE COUNTY IN WHICH AN ACTION MUST OR MAY BE BROUGHT.

Sec. 72. Against corporations.

§ 72. Excepting the actions mentioned in sections 62 to 66,\* both inclusive, and in sec-

tions 68, 70, 71, 73, 75, and 77,† an action against a corporation which has an office or place of business in this State, or a chief officer or agent residing in this State, must be brought in the county in which such office or place of business is situated, or in which such officer or agent resides; or, if it be upon a contract, in the above-named county, or in the county in which the contract is made or to be performed; or, if it be for tort, in the first-named county, or the county in which the tort is committed.

[An action against a common carrier, whether a corporation or not, upon a contract to carry property, must be brought in the county in which the defendant, or either of several defendants, resides, or in which the contract is made, or in which the carrier agrees to deliver the property. *Express Co. v. Crenshaw*, 78 Ky. 136.]

Answer to the merits of an action waives objection to jurisdiction of the court as to locality of the corporation or its officers. *Baker v. R. R. Co.*, 4 Bush, 619.

Action against corporation may be brought in county in which contracts sued on were to be performed. *Covington v. Limerick*, 40 S. W. Rep. 254.]

## TITLE VII. PLEADINGS.

### CHAPTER VII.

#### General Rules of Pleading.

Sec. 117. Pleadings must be verified by whom.

§ 117. Pleadings, the verification of which is required by this Code, must be verified as follows:

2. That \* \* \* of a municipal or private corporation, must be verified by its chief officer or agent, upon whom a summons in the action is lawfully served, or might be lawfully served if it were a defendant; or, if it have no such officer nor agent residing in the county in which the action is brought, or is pending, it may be verified by its attorney.

## TITLE VIII. PROVISIONAL REMEDIES.

### CHAPTER III.

#### Attachment.

Sec. 194. Grounds of attachment.

§ 194. The plaintiff may, at or after the commencement of an action, have an attachment against the property of the defendant, including garnishees as provided in section 227, as a security for the satisfaction of such judgment as may be recovered —

1. In an action for the recovery of money against —

1. A defendant, who is a foreign corporation, or a non-resident of the State; or,

8. \* \* \* But an attachment shall not be granted on the ground that the defendant is a foreign corporation, or a non-resident of this State, for any claim other than a debt or demand arising upon a contract, express or implied, or a judgment or award.

\*Actions relating to real estate, wills, etc.

† Actions against banks, insurance companies and common carriers.

Vacating charters; costs; construction — Civ. Code, §§ 480-488, 616, 628, 732.

## TITLE X. SPECIAL PROCEEDINGS.

### CHAPTER XIII.

#### Repealing or Vacating Charters, and Preventing the Usurpation of an Office or Franchise.

- Sec. 480. Action, ordinary, may be brought for.  
 481. Action, to repeal charter, how brought.  
 482. Action, what to be brought only by order of legislature.  
 483. Action, who may bring to prevent usurpation.  
 484. Action to be brought by attorney for commonwealth.  
 485. Attorney-general.  
 486. Action, for usurpation, what authorizes.  
 487. Usurper, judgment against.  
 488. Usurper, fees of, provision concerning.

§ 480. In lieu of the writs of scire facias and quo warranto, or of an information in the nature of a quo warranto, ordinary actions may be brought to vacate or repeal charters, and to prevent the usurpation of an office or franchise.

§ 481. The action to repeal or vacate a charter shall be in the name of the commonwealth, and be brought and prosecuted by the attorney-general, or under his sanction and direction by an attorney for the commonwealth.

§ 482. Actions to repeal or vacate the charters of municipal corporations, banks, railroad, turnpike road, and internal improvement companies, shall only be instituted by order of the legislature, unless otherwise expressly provided.

§ 483. If a person usurps an office or franchise, the person entitled thereto, or the commonwealth, may prevent the usurpation by an ordinary action.

[A franchise is a particular privilege conferred by grant from the government and vested in individuals, and an action for usurpation of it can be maintained only by the commonwealth. *Comm. v. Lexington, etc.*, 6 B. M. 397; *Same v. City*, 13 Bush, 185.

As to enjoining usurpation of franchise, see *Newport v. Taylor's Exrs.*, 16 B. M. 779; *Citizens' Gaslight Co. v. Louisville Gas Co.*, 81 Ky. 263; *Turnpike Co. v. Ratliff*, 85 id. 244; s. c., 3 S. W. Rep. 148.]

§ 484. It shall be the duty of the several commonwealth attorneys to institute the actions mentioned in this chapter against usurpers of county offices or franchises, if no person be entitled thereto, or if the person entitled fail to institute the same during three months after the usurpation.

§ 485. For usurpation of other than county offices or franchises, the action by the commonwealth shall be instituted and prosecuted by the attorney-general.

§ 486. A person who continues to exercise an office after having committed an act, or omitted to do an act, the commission or omission of which, by law, creates a forfeiture of his office, may be proceeded against for usurpation thereof.

§ 487. A person adjudged to have usurped an office or franchise shall be deprived thereof by the judgment of the court, and the

person adjudged entitled thereto shall be placed in possession thereof; but no one shall be adjudged entitled thereto, unless the action be instituted by him. And the court shall have power to enforce its judgment by causing the books and papers, and all other things pertaining to the office or franchise, to be surrendered by the usurper; and by preventing him from further exercising or using the same; and may enforce its orders by fine and imprisonment until obeyed.

§ 488. If the usurper have received fees and emoluments arising from the office or franchise, he shall be liable therefor to the person entitled thereto, who may claim the same in the action brought to deprive him of the office or franchise, or in a separate action. If no one be entitled to them, they may be recovered by the commonwealth, and shall be paid into the public treasury.

## TITLE XIV. MISCELLANEOUS PROCEEDINGS.

- Ch. 1. Security for costs.  
 2. Motions and notices.

### CHAPTER I.

#### Security for Costs.

Sec. 616. Surety for costs, who must give.

§ 616. A plaintiff who is a non-resident of this State, or a corporation other than a bank created by the laws of this State, before commencing an action, shall file in the clerk's office a bond of a sufficient surety, to be approved by the clerk, for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other to which it may be carried, either to the defendant or to the officers of the courts.

### CHAPTER II.

#### Motions and Notices.

Sec. 628. Notice how served on corporations.

§ 628. A notice to a corporation may be served on its chief officer or agent, or on its attorney.

## TITLE XVII. RULES OF CONSTRUCTION.

Sec. 732. Construction of certain words.

§ 732. In construing the provisions of this Code, these rules shall prevail, unless a different intention be expressed, or be shown by the context:

5. The word "person" includes a corporation.

21. The words "other country," "foreign corporation," and words of like import, refer to any part of the world out of this State.

32. The words "residence," "reside," mean, with reference to a corporation, its chief office, or place of business.

33. The chief officer or agent of a corporation which has any of the officers or agents herein mentioned is, 1. Its president; 2. Its vice-president; 3. Its secretary or librarian; 4. Its cashier or treasurer; 5. Its clerk; 6. Its managing agent.

See Statutes, § 457.

## SPECIAL ACTS ENACTED SUBSEQUENTLY TO 1894.

1. Concerning assessment and taxation of franchises.
2. Relating to foreign news corporations.

## Act 1.

AN ACT concerning the assessment and valuation for taxation of corporate franchises and intangible property by cities of the first and second class.

Be it enacted by the general assembly of the Commonwealth of Kentucky:

Section 1. That the franchise of every incorporated bank, trust company, guarantee or security company, gas, water, ferry, bridge, street railway, express, electric light, electric power, telegraph, press dispatch, telephone, turnpike, palace car, dining car, sleeping car, and chair car company and every other like company, corporation or association, having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall hereafter be valued and assessed for city taxes, in the manner hereinafter prescribed by the city assessor in cities of the first and second class, wherein such franchise is exercised, to the extent and in the proportion the same is therein exercised: Provided, however, That no assessment for city taxes shall be made by any assessor or board of valuation and assessment of the franchise of any private business, mercantile, or manufacturing corporation, whose property is not devoted to a public use.

§ 2. In order to determine the value of the franchises mentioned or referred to in the next preceding section, the corporations, companies, and associations, therein mentioned or referred to, shall each annually between September first, and October first, make and deliver to the assessor of cities of the first and second class, wherein its franchise is exercised, a statement verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the city assessor may prescribe, showing the following facts, viz.: The name and principal place of business of the corporation, company or association; the kind of business engaged in, the amount of capital stock, preferred and common; the number of shares of each; the amount of stock paid up; the par and real value thereof; the highest price at which such stock was sold at a bona fide sale within twelve months next before the first day of September of the year in which the statement is required to be made; the amount of surplus fund and individual profits, and the value of all other assets; the total amount of indebtedness as

principal, the amount of gross or net earnings or income, including interest on investments, and incomes from all other sources for twelve months next preceding the first day of September, of the year in which the statement is required; the amount and kind of tangible property, and where situated, assessed, or liable to assessment and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, and such other facts as the city assessor may require.

§ 3. Where the line or lines of any such corporation, company, or association extend beyond the limits of the city, the statement shall, in addition to the other facts hereinafter required, show the length of the entire lines operated, owned, leased, or controlled in the city, and the entire lines operated, owned, leased, or controlled elsewhere. If the corporation, company or association, operates or conducts its business in other States, as well as in this State, the statement shall show the following facts, in addition to the facts hereinafter required: The gross and net income or earnings received in the city, and out of the city on business done in the city, and the entire gross receipts of the corporation, company, or association, in the city and elsewhere, during the twelve months next before the first day of September of the year in which the assessment is required to be made. In cases where any of the facts above required are impossible to be answered correctly, or will not afford any valuable information in determining the value of the franchise to be taxed, the city assessor may excuse the officer from answering such questions: Provided, That the city assessor, from said statement, and from such other evidence as he may have, if such corporation, company, or association be organized under the laws of this State, shall fix the value of the capital stock of the corporation, company, or association, as provided in the next succeeding section, and from the amount thus fixed shall deduct the assessed value of all tangible property assessed in this State or in the counties where situated. The remainder thus found shall be the value of its corporate franchise subject to taxation as aforesaid.

§ 4. If the corporation, company or association be organized under the laws of any other State or government, except as provided in the next section, the city assessor shall fix the value of the capital stock, as hereinafter provided, and will determine from the amount of the gross receipts of such corporation, company, or association in the city and elsewhere, the proportion which



## Franchise tax in cities — Act of March 19, 1898.

the gross receipts in the city, within twelve months next before the first day of September of the year in which the assessment was made, bears to the entire gross receipts of the company; the same proportion of the value of the entire capital stock, less the assessed value of the tangible property assessed, or liable to assessment, shall be the correct value of the corporate franchise of such corporation, company or association for taxation in the city.

§ 5. If the corporation organized under the laws of this State, or some other State or government be a street railway, telegraph, telephone, express, sleeping, dining, palace or chair car company, the lines of which extend beyond the limits of the city, the city assessor will fix the value of the capital stock, as hereinafter provided, and that proportion of the value of the capital stock, which the length of the lines operated, owned, leased or controlled in the city, bears to the total length of the lines owned, leased or controlled in the city and elsewhere, shall be the value of the corporate franchise of such corporation liable for taxation in the city; and such corporate franchise shall be liable to taxation in each city of the first class, through, or into which such lines pass, or are operated, in the same proportion that the length of the line in such city bears to the whole length of the lines elsewhere.

§ 6. Whenever any person or association of persons, not being a corporation nor having capital stock, shall, in this State, engage in the business of any of the corporations mentioned and made subject to assessment in the first section of this act, then the capital and property, or the certificates or other evidences of the rights or interests of the holders thereof in the business or capital and property employed therein, shall be deemed and treated as the capital stock of such person or association of persons for the purpose of taxation, and all other purposes, under this act, in like manner as if such person or association of persons were a corporation.

§ 7. It shall be the duty of the city assessor, immediately after fixing such value, to notify the corporations, companies or associations of the fact; and all such corporations, companies or associations shall have at least ten days from the time of receiving such notice to go before the board of equalization of the city and ask a change of the valuation, and may introduce evidence, and the chairman of said board is hereby authorized to summon and swear witnesses, and after hearing such evidence, the said board may change the valuation as it may deem proper, and the action of said board shall be final.

§ 8. The city assessor shall make out and authenticate the tax bills on the assessments of franchises, as provided in this act, as well as on all assessments hereafter made by the board of valuation and assessment, which

shall have the same effect as tax bills made out and authenticated by him on assessments of other property, and shall list the same with the tax receiver for collection, and said tax bills shall be due and payable at the same time, subject to the same discounts and penalties, and be collectible by distraint, garnishment and suit, as now provided by law with respect to other tax bills due the city.

§ 9. Any corporation, or officer thereof, willfully failing or refusing to make reports as required by this act, shall be deemed guilty of a misdemeanor, and for each offense shall be fined one hundred dollars and five dollars for each day the same is not made after October first of each year, to be recovered by indictment or civil action, in the name of the city, in the circuit court of the county in which such city is situated.

§ 10. The individual stockholders of the corporation, which is by this act required to report, and pay, city taxes upon the corporate franchises, shall not be required to list their shares in such corporation so long as the corporation pays the city taxes on the corporate property and franchises as herein provided.

§ 11. Should any corporation required to make the report, as hereinbefore provided, be in the hands of, or under the control of a receiver, or other person, it shall be the duty of such receiver or other person to make the returns and valuations, as required by this act.

§ 12. Should any corporation, company or association, fail to make the report as required herein, on or before the first day of October of each year, the city assessor shall proceed to ascertain the facts and values as required by this act, in such manner and by such means as he deems proper, at the cost of the corporation, company or association failing to make the report and shall fix the values of the corporate franchise liable for taxation, as provided in this act, and the corporation, company or association shall be taxed accordingly.

§ 13. This act shall not apply to railroad or other corporations required by law to be assessed by the railroad commission.

(Approved March 19, 1898.)

## Act 2.

AN ACT to fix the conditions upon which foreign corporations formed for the purpose of or engaged in the business of buying, gathering or accumulating information or news or vending, supplying, distributing or publishing the same may carry on or transmit such or any part thereof in this State and fixing penalties for violation thereof.

Be it enacted by the general assembly of the Commonwealth of Kentucky:

Section 1. That all foreign corporations formed for the purpose or engaged in the

## Foreign news corporations — Act of March 10, 1898.

business of buying, gathering or accumulating information or news, or vending, supplying, distributing, or publishing the same shall as a condition of carrying on any part of said business in this State, at all times, vend, supply, distribute and publish the news and information bought, gathered or accumulated by such foreign \* all persons, firms and corporations organized under the laws of this State, or carrying on in this State the business of conducting or publishing a newspaper, when such person, firm or corporation desires to buy or be supplied with such news and information so bought, gathered or accumulated by such foreign corporation, and in vending, supplying, distributing and publishing the news and information so bought, gathered or accumulated by such foreign corporation, no discrimination in charges or prices shall be made by such foreign corporation between any of the persons, firms or corporations doing business in this State and desiring to purchase or be supplied with such information and news.

§ 2. It shall not be lawful for any foreign corporation or any agent or employee of such corporation formed for the purpose or engaged in the business of buying, gathering or accumulating information or news, or vending, supplying, distributing or publishing the same, to transact any of the business of such corporation shall have refused to vend, supply, distribute or publish the information or news bought, gathered or accumulated by it to any person, firm or corporation engaged in this State in carrying on the business of conducting or publishing a newspaper, when such person, firm or corporation has notified such foreign corporation or any agent upon whom process can be served under the laws of this State of his, their or its desire to purchase or to be supplied with said news or information so bought, gathered or accumulated by such foreign corporation and upon his, their or its offer to pay same charges or prices therefor which are exacted by said foreign corporation against other persons, firms or corporations engaged in this State in the business of conducting or publishing a newspaper, and any such foreign corporation, and any agent or employee of such foreign corporation, or any other person who shall carry on, transact, or cause to be conducted any business in this State for such foreign cor-

poration after it shall have failed or refused to comply with any of the requirements of this act shall be severally guilty of a misdemeanor and upon conviction fined not less than one hundred nor more than one thousand dollars for such offense, and each day's continuance of any part of the business of such foreign corporation in this State after it shall have failed to comply with any of the provisions of this act shall constitute a separate offense.

§ 3. A violation of the provisions of this act shall, upon conviction, operate to forfeit the charter of the corporation, or proceedings may be instituted by the attorney for the Commonwealth in any district within the State to forfeit the charter of any corporation violating the provisions of this act and to subject the party charged, if found guilty, to the penalty imposed in section two of this act.

§ 4. Every telegraph company, every telephone company, or every association, or company engaged in the buying, gathering, or transmitting of dispatches shall afford the same and equal facilities to all publishers of newspapers and furnish to all parties collected by them for publication, in any county or locality, to all newspapers there published on the same condition as to terms, payment, and delivery and for a violation of any of the provisions of this section, shall for such violation be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars nor more than one thousand dollars, and if a corporation or association shall upon conviction forfeit its charter.

§ 5. Inasmuch as grievous discrimination are now made by foreign corporations regulated by this act; and inasmuch as monopolies have been created by such corporations, there is an emergency that this act take immediate effect, and this act shall take effect upon its approval by the governor or passage.

(Vetoed by the Governor March 10, 1898.)

Passed the House of Representatives March 10, 1898, the objections of the governor to the contrary notwithstanding.

Passed the Senate March 10, 1898, the objections of the governor to the contrary notwithstanding.

\*So in original law.

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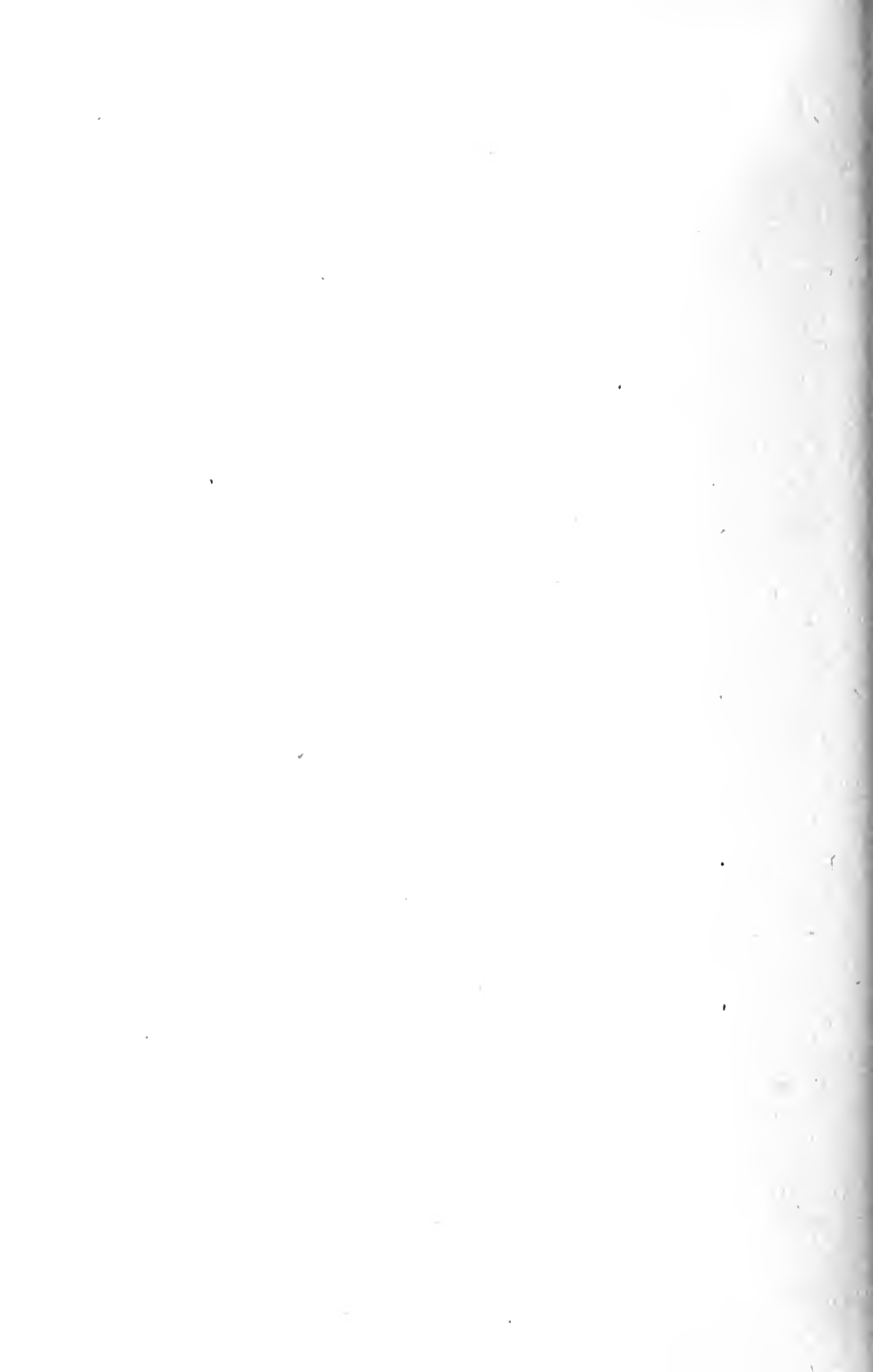
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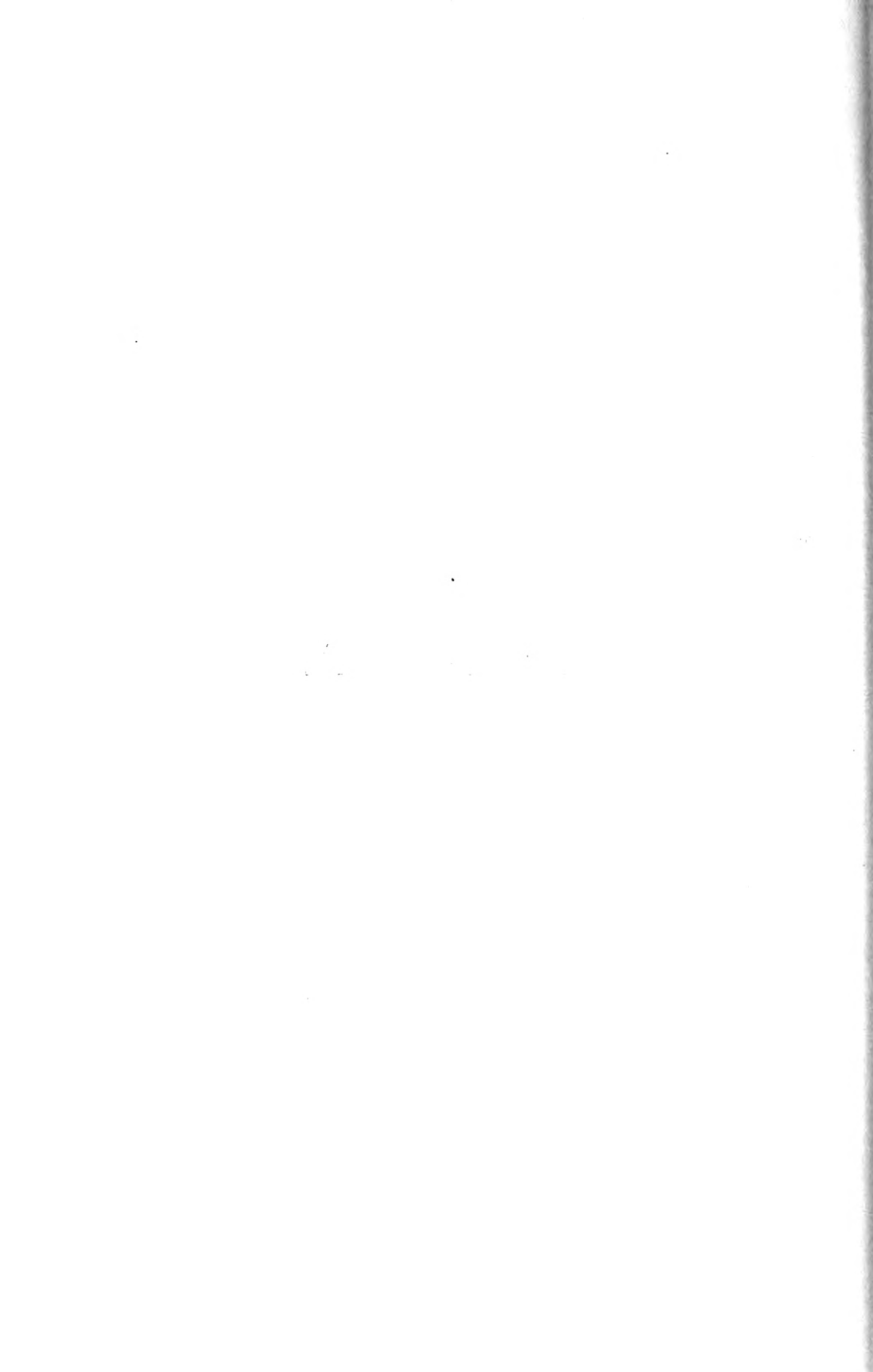
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LOUISIANA.

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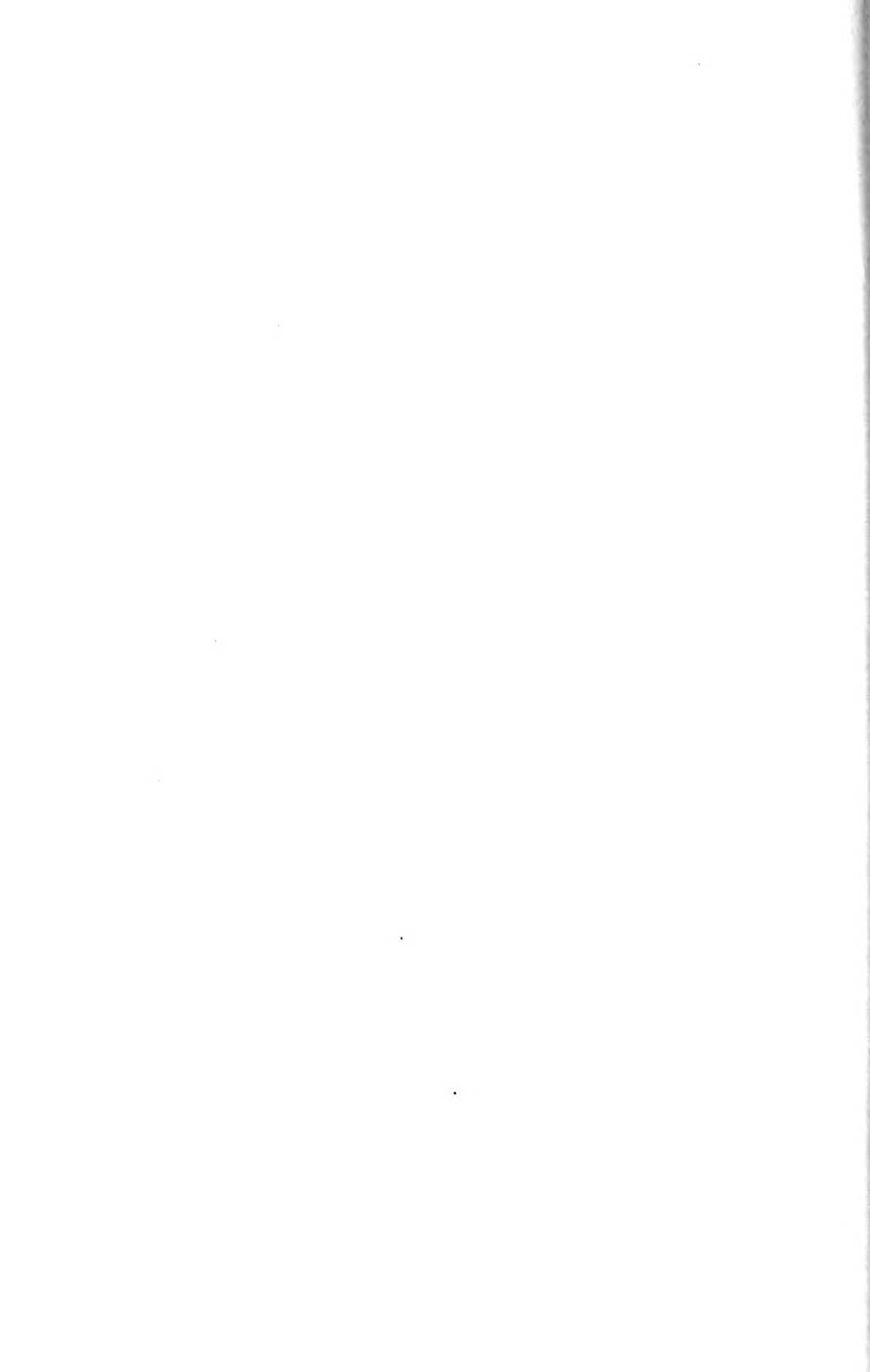
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# LOUISIANA.

## CONSTITUTION OF LOUISIANA — 1898.

### PROVISIONS RELATING TO CORPORATIONS.

#### Legislative Department.

Art. 48. General assembly not to pass local or special laws in certain cases.

49. Same.

50. Same; proviso.

51. No law shall fix price of labor.

58. Funds or credit of State not to be loaned.

59. Obligations of corporations not to be released.

#### General Provisions.

Art. 166. Obligations of contracts and vested rights, inviolate.

167. Private property not to be taken without compensation.

176. Laws regarding arbitration shall be passed.

190. Trusts and combinations prohibited.

#### Revenue and Taxation.

Art. 228. Power to tax corporations not to be surrendered.

229. License tax upon corporations.

230. Exemptions.

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#### Corporations and Corporate Rights.

Art. 262. Relative to forfeiture of charters.

263. Corporations not to infringe on rights of individuals.

264. Foreign corporations shall have one or more known agents for process.

265. Business limited to that authorized by charter.

266. Stock or bonds not to be issued except for value.

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268. "Corporations" defined.

269. Relative to bank officers receiving deposits after bank is insolvent.

270. Taxes may be levied in aid of certain corporations, when.

271. Any railroad corporation may construct and operate a railroad in this State. And may intersect or cross any other railroad.

272. Railroads are public highways.

273. Railroad corporation must have office for transaction of general business.

274. Consolidation of railroads. Not to affect jurisdiction.

275. General laws for creation of corporations shall be enacted.

#### Legislative Department.

Art. 48. The general assembly shall not pass any local or special law on the following specified subjects: \* \* \* \*

\* \* \* \*

Incorporating bridge or ferry companies, except for the erection of bridges crossing streams which form boundaries between this and any other State. \* \* \*

Authorizing the constructing of street passenger railroads in any incorporated town or city.

Regulating labor, trade, manufacturing or agriculture.

Creating corporations or amending, renewing, extending or explaining the charters thereof: Provided, This shall not apply to municipal corporations having a population of not less than twenty-five hundred inhabitants, or to the organization of levee districts and parishes.

Granting to any corporation, association, or individual any special or exclusive right, privilege or immunity \* \* \*

\* \* \*

Exempting property from taxation.

Fixing the rate of interest \* \*

\* \* \*

Laws impairing obligation of contracts prohibited. Art. 166. General laws for creating corporations shall be enacted. Art. 275; see art. 51.

Art. 49. The general Assembly shall not indirectly enact special or local laws by the partial repeal of a general law; but laws repealing local or special laws may be passed.

Art. 50. No local or special law shall be passed on any subject not enumerated in article forty-eight of this Constitution, unless notice of the intention to apply therefor shall have been published, without cost to the State, in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the general assembly of such bill, and in the same manner provided by law for the advertisement of judicial sales. The evidence of such notice having been published, shall be exhibited in the general assembly

General provisions; taxation — Const., Arts. 51, 58, 59, 166, 167, 176, 190, 228.

before such act shall be passed, and every such act shall contain a recital that such notice has been given.

Art. 51. No law shall be passed fixing the price of manual labor.

See art. 48.

Art. 58. The funds, credit, property or things of value of the State, or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, association or corporation, public or private; nor shall the State, or any political corporation, purchase or subscribe to the capital or stock of any corporation or association whatever, or for any private enterprise. Nor shall the State, nor any political corporation thereof, assume the liabilities of any political, municipal, parochial, private or other corporation or association whatsoever; nor shall the State undertake to carry on the business of any such corporation or association, or become a part owner therein; Provided, The State, through the general assembly, shall have power to grant the right of way through its public lands to any railroad or canal;

\* \* \* \* \*

[The State cannot give aid to company, except in certain cases and under certain limitations. *State v. Burgess*, 23 La. Ann. 226.]

Art. 59. The general assembly shall have no power to release or extinguish, or to authorize the releasing or extinguishment, in whole or in part, of the indebtedness, liability or obligation of any corporation or individual to the State, or to any parish or municipal corporation thereof; Provided, The heirs to confiscated property may be released from all taxes due thereon at the date of its reversion to them.

### General Provisions.

Art. 166. No ex-post facto law, nor any law impairing the obligations of contracts, shall be passed, nor vested rights be divested, unless for purposes of public utility, and for adequate compensation previously made.

Special laws prohibited. Art. 48. No law shall fix price of labor. Art. 51. Laws shall provide for creation of corporations. Art. 275.

[No fundamental change in charter, vitally affecting established rights, can be forced by the acts of the majority upon an unwilling stockholder. *Hoey v. Henderson*, 32 La. Ann. 1069.

Although corporations possess inherent power of dissolution at law, that right does not carry with it authority of impairing the obligation of contracts. *Schleider v. Dielman*, 44 La. Ann. 462; s. c., 10 So. Rep. 934.

The existing law of the State is a part of the contract, so far as applicable, in every act of incorporation. *State v. Gas Co.*, 2 Rob. 529.

If charters be contracts, they are contracts which the legislature may, in certain cases, dissolve. *Palfrey v. Paulding*, 7 La. Ann. 363.

If an act amending a charter involve the destruction of a vested right, or impair an obligation,

it will be declared void. *Bolsdere v. Bank*, 9 La. 511; *Gas Co. v. Bennett*, 6 La. Ann. 457.

When a corporation is the mere creature of legislative will, the legislature may, at pleasure, modify its charter. *Academy v. George*, 14 La. 395.

But where individuals are incorporated, with perpetual succession, and power to acquire property by donation or otherwise, such a charter is in the nature of a contract, which cannot be altered by a subsequent act of the legislature, contrary to wishes of corporators. *Id.*; *Boykin v. Shaffer*, 13 La. Ann. 129.

The capacity of contracting is generally within the power of the legislature in reference to future contracts; and remedies may be modified at its will. *Hyde v. Bank*, 8 Rob. 416.

Although a charter contains no provision for the liquidation of the corporation in case of its dissolution, the omission may be supplied by subsequent legislation, without impairing the obligation of the contract between the State and the corporators, conceding the charter to be such. *Haynes v. Carter*, 9 La. Ann. 265.]

Art. 167. Private property shall not be taken nor damaged for public purposes without just and adequate compensation being first paid.

See art. 271.

[It is not necessary to establish actual trespass or physical taking of the property itself; it is sufficient if property has been substantially damaged. *Griffin v. R. R. Co.*, 41 La. Ann. 808; s. c., 6 So. Rep. 624.

This article adds the requirement of compensation for damage to private property to former requirement of compensation for the taking of property. The compensation in both cases is restricted to and measured by the value of the property itself, being the whole value when taken diminished by value when damaged. *McMahon v. R. R. Co.*, 41 La. Ann. 827; s. c., 6 So. Rep. 640.

Private property cannot be taken for public use without securing to the owner the compensation the jury of freeholders find allowable. *Calder v. Police Jury*, 44 La. Ann. 173; s. c., 10 So. Rep. 726.

Companies incorporated for a particular object, without specifying their powers and mode of obtaining the property of individuals, must proceed according to the general law. *Mabire v. Canal Bank*, 11 La. Ann. 86.]

Art. 176. It shall be the duty of the general assembly to pass such laws as may be proper and necessary to decided differences by arbitration.

Art. 190. It shall be unlawful for persons or corporations, or their legal representatives, to combine or conspire together, or to unite or pool their interests for the purpose of forcing up or down the price of any agricultural product or article of necessity, for speculative purposes; and the legislature shall pass laws to suppress it.

See art. 265. Trusts prohibited by Act of 1892, at p. 28.

### Revenue and Taxation.

Art. 228. The power to tax corporations and corporate property shall never be surrendered nor suspended by act of the general assembly.

See art. 207. Property of corporation where assessed. R. S., §§ 733, 734. Foreign corporation,

entry of corporation on assessment-roll, etc. R. S., §§ 735-738. See Revenue Act of 1888 at p. 26.

Art. 229. The general assembly may levy a license tax, and in such case shall graduate the amount of such tax to be collected from the persons pursuing the several trades, professions, vocations and callings. All persons, associations of persons and corporations pursuing any trade, profession, business or calling, may be rendered liable to such tax, except clerks, laborers, clergymen, school teachers, those engaged in mechanical, agricultural, horticultural and mining pursuits, and manufacturers other than those of distilled, alcoholic or malt liquors, tobacco, cigars, and cotton-seed oil. No political corporation shall impose a greater license tax than is imposed by the general assembly for State purposes. This restriction shall not apply to dealers in distilled, alcoholic or malt liquors.

The general assembly shall have authority to provide that municipalities levying license taxes equal in amount to those levied by police juries for parochial purposes, shall be exempted from the payment of such parochial licenses.

[Amount of license tax is regulated by Act 127, Laws of 1898.]

License of corporations domiciled out of State. Art. 242.

[A license is a tax, but not a property tax. *Parish v. Brigham*, 41 La. Ann. 663; s. c., 6 So. Rep. 257.]

The Constitution contemplates two kinds of taxes, viz.: the property tax and the license tax. *Tax Collector v. Ins. Co.*, 42 La. Ann. 428; s. c., 7 So. Rep. 599.

The tax imposed on the gross receipts of foreign insurance companies by Act of 1886 is not a license tax, but a property tax. Id.

A tax on "gross receipts" is not a tax on the "capital" or "capital stock" of the corporation; it is an "income tax." Id.]

Art. 230. \* \* \*

There shall also be exempt from parochial and municipal taxation for a period of ten years from the first day of January, nineteen hundred, the capital, machinery and other property employed in mining operations, and in the manufacture of textile fabrics, yarns, rope, cordage, leather, shoes, harness, saddlery, hats, clothing, flour, machinery, articles of tin, copper and sheet iron, agricultural implements, and furniture and other articles of wood, marble or stone; soap, stationery, ink and paper, boat building and fertilizers and chemicals; Provided, That not less than five hands are employed in any one factory; Provided, That nothing herein contained shall affect the exemptions provided for by existing constitutional provisions.

There shall also be exempt from taxation for a period of ten years from the date of its completion any railroad or part of

such railroad that may hereafter be constructed and completed prior to January first, nineteen hundred and four; Provided, That when aid has heretofore been voted by any parish, ward, or municipality to any railroad not yet constructed, such railroad shall not be entitled to the exemption from taxation herein established, unless it waives and relinquishes such aid or consents to a resubmission of the question of granting such aid to a vote of the property taxpayers of the parish, ward or municipality, which has voted the same, if one-third of such property taxpayers petition for the same within six months after the adoption of this Constitution.

And provided further, That this exemption shall not apply to double tracks, sidings, switches, depots or other improvements or betterments, which may be constructed by railroads now in operation within the State, other than extensions or new lines constructed by such railroads; nor shall the exemption hereinabove granted apply to any railroad or part of such railroad, the construction of which was begun and the road-bed of which was substantially completed at the date of the adoption of this Constitution.

\* \* \*

[The capital, machinery and material employed in the manufacturing of cordage, rope and twine is exempt from taxation. *Waterbury v. Cordage Co.*, 42 La. Ann. 723; s. c., 7 So. Rep. 783.]

Temporary interruptions in operation of factory employed in manufacturing articles above mentioned do not subject property and machinery employed therein to taxation. Id.

But where the factory is leased, and the object of the lease is to prevent the manufacture of the articles required to be manufactured to exempt their property or machinery from taxation, the object of the lease is in direct opposition to provision of above article, and the property and machinery become subject to taxation. Id.

From the fact that above article exempts for a time the capital, machinery and other property employed in the manufacture of machinery, etc., it does not follow that merchandise and cash assessed, and not affirmatively shown to have been thus employed, enjoyed the immunity. *Ivens v. Tax Collector*, 42 La. Ann. 1103; s. c., 8 So. Rep. 399. Exemption laws are strictly interpreted. Id.

Capital, machinery and other property employed in manufacturing paper boxes are not exempt from taxation under above article. *Washburn v. City*, 43 La. Ann. 226; s. c., 9 So. Rep. 37.

So, also, capital employed in manufacture of "shoe uppers," is not employed in the manufacture of "leather," nor of "shoes," and is not exempt. And manufacture of wire furniture is not exempt. *Gast v. Assessors*, 43 La. Ann. 1104; s. c., 10 So. Rep. 184.

Articles manufactured in this State for agricultural purposes when more than five hands are employed, are exempt from taxation under above article. But articles and goods not manufactured here, and carried in stock with that manufactured here, are subject to taxation. *Iron Works v. City*, 44 La. Ann. 554; s. c., 11 So. Rep. 3.

The word "employed" means invested. *State v. Assessors*, 46 La. Ann. 859; s. c., 15 So. Rep. 384.

The exemption from taxes of certain manufacturing corporations held not affected by the fact that they also engaged in business distinct from manufacturing. *Chemical & Fertilizing Co. v. Board of Assessors*, 21 So. Rep. 31.]

Art. 242. Corporations, companies or associations organized or domiciled out of the State, but doing business therein, may be licensed and taxed by a mode different from that provided for home corporations or companies; Provided, Said different mode of license shall be uniform, upon a graduated system, and said different mode of taxation shall be equal and uniform as to all such corporations, companies or associations that transact the same kind of business.

License tax upon corporations. Art. 229.

[Above article has no reference to domestic corporations. *City v. R. R. Co.*, 41 La. Ann. 519; s. c., 7 So. Rep. 83.]

### Corporations and Corporate Rights.

Art. 262. The general assembly shall not remit the forfeiture of the charter of any corporation now existing, nor renew, alter or amend the same, nor pass any general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

Duties of attorney-general as to forfeiture. R. S., § 131. Charter forfeited for insolvency. R. S., § 688. Proceedings on forfeiture. R. S., § 731. Same by violation of charter. R. C. C., art. 447.

Art. 263. The exercise of the police power of the State shall never be abridged nor so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

See R. C. C., art. 445.

Art. 264. No domestic or foreign corporations shall do any business in this State without having one or more known places of business and an authorized agent or agents in the State upon whom process may be served.

See art. 273.

Domicile of corporation. R. S., § 740. To file declaration of place of domicile. Act of 1890 at p. 27.

[A corporation may be created by the laws of several States and become a distinct corporation in each, domiciled therein, and may be sued in such cases as a distinct corporation in the courts. *Guhau v. R. R. Co.*, 41 La. Ann. 571; s. c., 6 So. Rep. 850.

Where a suit is brought against a corporation in the courts of this State, and affidavit for removal alleges that the corporation is a citizen of another State, it is insufficient in not stating that the corporation is not domiciled in Louisiana. *Id.*

Our Constitution does not deny to citizens of Louisiana the privilege of borrowing money from foreign corporations, nor does it prohibit such corporations from lending money to our citizens, provided only that such transactions are not made in the course of business carried on by the corporations in the State, without complying with the requirement of above article. *Reeves v. Harper*, 43 La. Ann. 516; s. c., 9 So. Rep. 104.

Foreign companies do not, in appointing a board of directors to act as their agents, localize their business any more than those companies which manage their affairs through agencies not organized into boards. *Ins. Co. v. Assessors*, 44 La. Ann. 760; s. c., 11 So. Rep. 91.

A foreign corporation, authorized to contract in this State, may contract according to its laws, where the charter contains no prohibition. *Frazier v. Willcox*, 4 Rob. 517.

If the State chooses to allow foreign corporations to transact business in their corporate name through agents, within our limits, it may attach any conditions it sees fit to the privilege. *State v. Lathrop*, 10 La. Ann. 398.

It is a confusion of ideas to place foreign corporations on the same footing with domestic, or to claim for them the personal and constitutional rights of citizens of the several States of the Union. *Id.*

The legislature may prohibit foreign corporations from contracting in the State; but until it does, contracts so made will be enforced. *Frazier v. Willcox*, supra.]

Art. 265. No corporation shall engage in any business other than that expressly authorized in its charter or incidental thereto, nor shall it take or hold any real estate for a longer period than ten years, except such as may be necessary and proper for its legitimate business or purposes.

Charter to contain what. R. S., § 685. Trusts and combinations prohibited. Act of 1892, at p. 28.

[A corporation cannot subscribe for stock in another company whose objects are foreign to its own. *Steamship Co. v. Dry Dock Co.*, 28 La. Ann. 173.

The investment of the profits of insurance companies in loans secured by mortgage cannot be considered as banking business, and is not prohibited by law. *Life Assn. v. Levy*, 33 La. Ann. 1203.

A corporation possesses only those powers which its charter confers, either expressly or as incidental to its existence. *Bank v. Nav. Co.*, 3 La. Ann. 294.

The construction put upon a charter by acts of stockholders themselves, where there is a doubt, is a safe rule of interpretation, and will be followed, as in the case of conventional obligation. *Purton v. Carrollton Co.*, 3 La. Ann. 19; *Bank v. Guice*, 2 id. 249; *Bernudez v. Bank*, 7 id. 62.

If possible, every clause of a charter should be construed so as to harmonize with every other clause thereof. *McIntosh v. Merchants' Co.*, 9 La. Ann. 403.

The act of incorporation of a corporation limited must show the limitation. *Lehman v. Knapp*, 29 So. Rep. 674.]

Art. 266. No corporation shall issue stock or bonds, except for labor done or money or property actually received, and all fictitious issues of stock shall be void, and any corporation issuing such fictitious stock shall forfeit its charter.

Power to issue bonds secured by mortgage. R. S., § 692.

Art. 267. The stock shall neither be increased nor decreased, except in pursuance of general laws, nor without consent of persons holding the larger amount in value of the stock, first obtained at a meeting of

stockholders to be held after thirty days' notice given in pursuance of law.

Increase or decrease of capital stock. See Act No. 11, at p. 30.

Art. 268. The term corporation, as used in this Constitution, shall be construed to include all joint-stock companies or associations having any power or privilege not possessed by individuals or partnerships.

"Corporation" defined. R. C. C., art. 427. Political and private corporation defined. R. C. C., art. 429. Civil and religious corporation defined. R. C. C., art. 431.

[Companies whose stock is owned by private individuals are essentially private corporations. *State v. Gas Co.*, 2 Rob. 529.]

Art. 269. It shall be a crime, the punishment of which shall be prescribed by law, for any president, director, manager, cashier, or other officer or owner of any private or public bank or banking institution or other corporation accepting deposits or loans to assent to the reception of deposits, or the creation of debts by such banking institutions, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; any such officer, agent or manager, shall be individually responsible for such deposits so received and all such debts so created with his assent.

See R. C. C., art. 439.

Art. 270. The general assembly shall have power to enact general laws authorizing the parochial, ward and municipal authorities of the State, by a vote of the majority of the property taxpayers in number entitled to vote under the provisions of this Constitution and in value, to levy special taxes in aid of public improvements or railway enterprises; Provided, That such tax shall not exceed the rate of five mills per annum, nor extend for a longer period than ten years; And provided further, That no taxpayer shall be permitted to vote at such election unless he shall have been assessed in the parish, ward or municipality to be affected for property the year previous.

Art. 271. Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's

passengers, tonnage and cars, loaded or empty, without delay or discrimination.

See art. 167. Consolidation of railroads. Art. 274. Streets not to be used without consent of authorities. R. S., § 689.

[The legislature has power to authorize building of a railroad on a street of a city, and may directly exercise the power or devolve it upon the municipal authorities. *Harrison v. Ry. Co.*, 34 La. Ann. 462.]

Art. 272. Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and railroad companies common carriers.

Art. 273. Every railroad or other corporation, organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made, and where shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, the names of owners of stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfers of said stock, with the date of transfer, the amount of its assets and liabilities, and the names and places of residence of its officers.

See art. 264, and cross-references.

Art. 274. If any railroad company, organized under the laws of this State, shall consolidate, by sale or otherwise, with any railroad company organized under the laws of any other State or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction in all matters which may arise, as if said consolidation had not taken place. In no case shall any one consolidation take place except upon public notice of at least sixty days to all stockholders, in such manner as may be provided by law.

See R. S., § 684, subd. 2, and cross-references. Consolidation of manufacturing corporations. Act of 1874, at p. 25. Combinations and trusts prohibited. Act of 1892, p. 28.

Art. 275. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholder.

Special laws prohibited. Arts. 48-50. Formation of corporations. R. S., § 683. Same. Act of 1882, at p. 26. Formation of corporation for certain purposes. Act of 1888, at p. 26.

## REVISED STATUTES OF LOUISIANA — 1870.

## Attorney-General.

Sec. 131. Duties of, regarding corporations.

§ 131. It shall be the duty of the attorney-general \* \* \* to institute proceedings against all banking or other corporations chartered by the State, and situated in the first judicial district; to obtain the forfeiture of their charters in cases of violation of the same, where no provision has been made by law for the forfeiture of their charter; \* \* \*

See Const., art. 262, and cross-references.

[The writ of quo warranto is only issued in relation to the offices of corporations. *Terry v. Stauffer*, 17 La. Ann. 306.

No one but the attorney-general can urge the forfeiture of a bank's charter. *Riggin v. Bank*, 18 La. Ann. 677.

Before a suit for forfeiture of charter of any bank located in New Orleans can be entertained, it is indispensable that a petition praying for the forfeiture shall be presented by the attorney-general, or by the district attorney, or by them both. *State v. Bank*, 31 La. Ann. 836.

A corporate charter can be forfeited only at the instance of the State. In re *Louisiana Savings Bank*, 35 La. Ann. 196.

Power to enforce forfeiture of charter is possessed by the State alone. *Bank v. Dawson*, 13 La. 506.

Neither the forfeiture, until judicially decreed, nor the cause, can be inquired into collaterally. *Id.*

A charter may be forfeited for misuse or abuse, but such misuse or abuse must be first judicially ascertained. *State v. Gas Co.*, 2 Rob. 529.

President and directors, without stockholders' consent, cannot confess a forfeiture. But where, in a suit by the State, their answer does not deny the grounds of forfeiture alleged, they must be taken as true, and a forfeiture decreed. *State v. Atchafalaya Co.*, 5 Rob. 63.

A forfeiture cannot be declared by the legislature; it is a matter of judicial inquiry and must be decreed by a court. *Perry v. Clinton Co.*, 11 Rob. 404.]

## Corporations.

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§ 683. (As amended April 10, 1880.) It shall be lawful for any number of persons, not less than six, on compliance with the provisions following, to form themselves into, and constitute a corporation for the following purposes, to wit: For the construction, working and maintenance of railroads, canals, plankroads, bridges, ferries and other works of public improvement, whether within or without the limits of this State; to effect fire, marine, river and life insurance; to carry on manufactories of cotton, woolen, linen, silk and hempen cloths and cordage; to construct and carry on works to supply cities or towns with gas or water; to compress cotton; to construct and carry on iron, brass and copper foundries; to construct and maintain dry docks or floating docks for the building or repairing of ships and other vessels; to manufacture iron, copper, lead or other metals, earthenware or stoneware, engines, cotton gins, machinery, paper, gunpowder, agricultural implements; to establish companies for refining sugar, and for sea navigation by steam; to create lines of telegraph, and to establish chemical laboratories and manufactures of all kinds; to open and work mines; to construct and maintain docks, steamships and other vehicles for the transportation of freight and passengers; for constructing and maintaining works of drainage, sewerage and land reclamation; and for the development of the agricultural resources of the State, and for the promotion of immigration, and generally all works of public utility and advantage. No such corporation shall engage in mercantile or in commission, brokerage, stock jobbing, exchange or banking business of any kind.

See Const., art. 275, and cross-references. Use of corporations. R. C. C., art. 428. Corporations defined. Const., art. 268.

[Corporations are distinct from persons composing them, yet the latter have rights which they may protect in courts. *Knabe v. Ternot*, 16 La. Ann. 15.

Ownership of stock does not give stockholders any legal estate in corporate property. *Morgan v. R. R. Co.*, 1 Woods (U. S.), 15; *Sala v. New Orleans*, 2 id. 189.

## Corporate powers — R. S., § 684.

The property of an extinct corporation belongs to the individual members. *Burke v. Wall*, 29 La. Ann. 39.

A corporation may be formed for the business of establishing a wharf-boat and steam elevator at a river bank. *Glen v. Breard*, 35 La. Ann. 875.

Parol testimony is inadmissible to show anything against or beyond what is contained in an act of incorporation. *Packett Co. v. Brown*, 36 La. Ann. 158.

Franchises and corporate rights of a corporation and the means vested in it for the purpose of its existence, cannot be granted away and transferred by any act of its own or by any adverse proceeding, unless with the consent of the original grantor, formally expressed. *R. R. Co. v. Delamore*, 34 La. Ann. 1225.

And in absence of any provision to that effect, either in charter or the general law, a franchise cannot be levied upon for debts. *Id.*

Corporations created under the general statutes of the State (sections 683 et seq.) have no power to create a corporation distinct and independent from themselves. *Ins. Co. v. Harbor Co.*, 37 La. Ann. 233.

Private corporations must be authorized by the legislature or established according to law. *Williams v. Masons*, 38 La. Ann. 620.

Whether they have power to own stock in another corporation must be determined by charter. *Kenn v. Day*, 45 La. Ann. 71; s. c., 12 So. Rep. 6.

Incorporated trading companies are not partnerships. The association of shareholders does not constitute a partnership according to the custom of merchants, nor within the principles of law established respecting joint traders. *Purton v. Carrollton Co.*, 3 La. Ann. 19.

Stockholders are like partners; when one fails to furnish his quota of stock and it is furnished by the others, he is chargeable for the advance with interest. *Bank v. New Orleans*, 11 La. 217.

The material distinction between a partnership and a corporation is found in the power of the latter to enact by-laws, the limited responsibility of the stockholders, and their rights, by transfer of shares, to introduce new partners into the association. *Purton v. Carrollton Co.*, supra.

The acts of corporate officers are admissible in evidence to prove the acceptance of an amended charter by an existing corporation. A written instrument or vote of acceptance on corporate books is not indispensable. It may be inferred from other facts. *Palfrey v. Paulding*, 7 La. Ann. 363.

Same person may fill position of president of two distinct corporations, and such identity does not, of itself, invalidate dealings between the two corporations. *Leathers v. Janney*, 41 La. Ann. 1120; s. c., 6 So. Rep. 884.

Proof of agency for a corporation may be made by parol, when not objected to. *Marlatt v. Levee*, etc., Co., 10 La. 586.

In general, corporations can contract only in writing through their official agent, though their assent to certain contracts may sometimes be inferred from silence or acquiescence. *Courtney v. Ins. Co.*, 12 La. 233.]

§ 684. (As amended April 10, 1880.) "Said corporation shall have power and authority, first, to have and enjoy succession by their corporate name for the period expressed in their act of incorporation, not exceeding ninety-nine years;

See R. C. C., art. 427. Corporate name must be adopted. R. C. C., art. 432. Right of succession. *Id.*; art. 434. See corporate powers enumerated in R. C. C., art. 433.

[The right of succession is inherent to the nature of a corporation, and they transmit their successions and their rights of property. *Williams v. Masons*, 38 La. Ann. 620.]

Second, To contract, sue and be sued, in their corporate name;

Consolidation of corporations, effect of. Const., art. 274. Duties of attorney-general regarding corporation. R. S., § 131. Copies of records as evidence. *Id.*, § 694. When corporation may be sued for trespass. *Id.*, § 725. Proceedings when charter forfeited. *Id.*, § 731. To sue and be sued by corporate name. R. C. C., art. 432. Corporate powers, duties of officers. *Id.*, art. 433, 439. May not bring an action for assault. *Id.*, art. 442. Corporation cannot appear in court, when. *Id.*, art. 446. To sue in corporate name. C. P., art. 112. Same. *Id.*, art. 119. Petition, how served. *Id.*, arts. 191-202. Quo warranto proceedings. *Id.*, arts. 867-873. Actions before justices of the peace. *Id.*, art. 1069. See Act of 1888, at p. 27.

[A corporation not yet in existence cannot incur liability, although the services rendered were to organize and put the same in successful operation. *Marchand v. L. & P. Assn.*, 26 La. Ann. 389.

A private corporation is a person in law, quite as responsible for its contracts as natural persons are. *Schleider v. Dielman*, 44 La. Ann. 462; s. c., 10 So. Rep. 934.

Having only the powers conferred by their charters, corporations are not bound by contracts made by those not authorized to represent them. *Seibrecht v. New Orleans*, 12 La. Ann. 496.

They have no higher rights than citizens, unless specially granted, and are especially bound by the acts of their agents, as they can be bound in no other way. *Municipality v. Cotton Press*, 18 La. Ann. 246.

So they are bound by their attorney's admissions of record. *Id.*

Their privileges and authority are commensurate with their duties. *State v. Wilson*, 6 U. S. 180.

A corporation may sue for an infringement of its trade-mark. *Oil Co. v. Scott*, 33 La. Ann. 946.

And may sue on a bond given in favor of its president and directors to guarantee the faithful performance of the duties of an officer or agent. *Bank v. Mills*, 28 La. Ann. 736.

And be sued for injuries inflicted through the negligence, imprudence and want of skill of its servants. *Carmenty v. Gulf Co.*, 5 La. Ann. 703.

It may be made responsible for the acts of a contractor who has become its agent. *Boykin v. Shaffer*, 13 La. Ann. 129.

A corporation may execute a lawful power so injuriously and maliciously as to justify a claim for damages. But, when the subject-matter is within its corporate powers, the presumption is in favor of the legality and good faith of its action; and the complainant must make out a clear case of willful oppression. *Reynolds v. Shreveport*, 13 La. Ann. 426.

A corporation is not liable ex delicto, unless the act complained of is unlawful, or improperly or wantonly executed. The rule applies with peculiar force to acts of non-feasance, within corporate discretion, and involving an expenditure of corporate funds. *Bennett v. New Orleans*, 14 La. Ann. 120.

A corporation is civilly responsible for damages caused by acts of its agents, done by its commands, in a matter within the scope of its corporate objects. *Rabassa v. Nav. Co.*, 5 La. 463.

It is responsible for every injurious act, except where specially exempted by law. *Id.*; *Mabire v. Canal Bank*, 11 *id.* 86.

A corporation held liable for the sinking of a boat by its agents. *Marlatt v. Levee*, etc., Co., 10 La. 586.

There is no distinction as to liability of corporations and natural persons, for the acts and neglect of their agents, when acting within scope

of their employment. *Ware v. Barataria Co.*, 15 La. 170.

Where an agent, acting under directions of the corporation, does any act causing damage, the corporation will be responsible. Otherwise, where he acts of his own free will, without reference to his functions as an agent. *Etting v. Bank*, 7 Rob. 459; *Walling v. Shreveport*, 5 La. Ann. 660.

A bank held not liable for an unauthorized declaration by one of its officers. *Etting v. Bank*, 7 Rob. 459.

Corporators cannot sue singly for the corporation. What is due to the corporation is not due to the individuals composing it. *Ross v. Crockett*, 14 La. Ann. 811.

A member of a corporation, who is a creditor thereof, has same right as any other creditor to sue it and attach its property. *Life Assn. v. Levy*, 33 La. Ann. 1203.

A private statute creating a private corporation is not such a law as a court will take judicial cognizance of; it must be offered in evidence. *Mandere v. Sav. Inst.*, 28 La. Ann. 415. Parol evidence when received to prove the charter of a corporation will be considered. *Monaghan v. Hall*, 18 La. Ann. 310.

An exception that a petition of the corporation does not show that suit was authorized, would be overruled if affidavit accompanying petition discloses name of vice-president of the company, and affirms the truth of its allegations, the necessary inference being that the suit was apparently authorized. *Lacaze v. Creditors*, 46 La. Ann. 237; s. c., 14 So. Rep. 601.

Complaint in an action against a corporation and its officer for personal injuries held insufficient as against the officers. *Herny v. Brackenridge Lumber Co.*, 20 So. Rep. 221.]

### Third, To make and to use a corporate seal;

[Use of seal not necessary in appointment of agents. *Fleckner v. Bank*, 18 Wheat. (U. S.) 338.

The seal itself is prima facie evidence that it was affixed by proper authority, but the court may look beyond the seal, affixed to a deed, signed by president and secretary, and if shown to have been affixed without authority of directors, the deed will be declared void. *Adams v. Creditors*, 14 La. 455.

Payment to a bank, like that to an individual, may be proved by parol or otherwise, without the corporate seal. *Millaudon v. Colla*, 15 La. 213.]

### Fourth, To hold, receive, purchase and convey, under their corporate name, property, both real and personal;

See R. C. C., art. 423; *Id.*, art. 436.

[Corporations may hold real estate and receive legacies and donations. *Williams v. Masons*, 38 La. Ann. 620.

If a corporation acquire property, even in a manner prohibited by law, the property is not liable for debts of the vendor. *Edwards v. Fairbanks*, 27 La. Ann. 450.

A corporation authorized to sell its property is in general authorized to mortgage it. In *re Mechanics' Soc.*, 31 La. Ann. 627.

A stockholder has an interest to prevent sale of corporate property by persons having no legal power to sell. *State v. Judge*, 31 La. Ann. 823.

In absence of charter provision, no law prevents a corporation from selling all or any part of its property. *Leathers v. Janney*, 41 La. Ann. 1120; s. c., 6 So. Rep. 881.

When one corporation sells property to another for a fixed price, to be paid in stock of the latter to be delivered to the former through its designated officer, delivery of the certificate of stock to such officer or to another by his order, operates a discharge for the price. *Id.*

Whether a corporation has a right to own stock in another corporation is determined by its charter. *Kern v. Day*, 45 La. Ann. 71; s. c., 12 So. Rep. 6.

Corporations have, by our laws, same capacity as natural persons to take by devise. *Milne v. Milne*, 17 La. 46.

A bank may take a crop of cotton as security for a loan and sell it to reimburse the loan. *DeLoach v. Jones*, 18 La. 447.

A corporation may, in course of its legitimate business, make a promissory note, though without express authority of its charter. *Brode v. Ins. Co.*, 8 Rob. 244; *Bank v. Nav. Co.*, 3 La. Ann. 294.]

### Fifth, To name and to appoint such managers, directors and officers as their interest and convenience may require;

Corporation to appoint officers. R. C. C., art. 438. Election of officers. R. S., § 741. Usurpation of office in corporation. C. P., art. 869. Court cannot inquire into election of officers, when. C. P., art. 873. Directors, see R. C. C., arts. 438, 439, notes.

[Corporate seal not necessary in appointment of agents. *Fleckner v. Bank*, 18 Wheat. (U. S.) 338.

President of a railroad company who superintends the putting up of a building for the company cannot claim compensation therefor. *Levisse v. R. R. Co.*, 27 La. Ann. 641.

Officers who are not stockholders can only receive their salary after payment of corporate debts. *Cochran v. Dry Dock Co.*, 30 La. Ann. 1365.

A bank is liable in damages for refusal, by its directors, to admit one entitled to subscribe for its stock to do so. *Bank v. McDonough*, 5 La. 67. A party so aggrieved may resort to an action for damages, which will be allowed for capricious or improper conduct of the board, but not an honest error. *Walden v. Bank*, 6 La. 248.

A stockholder who sells his stock, but is not released from his subscription is bound for installments. *Ins. Co. v. Gordon*, 8 La. 176.

If, after a sale of stock, an installment, previously called in, becomes due, the vendor, who has been compelled to pay it, must be reimbursed by the vendee. *Gordon v. Parker*, 10 La. 56.

A party will be relieved from fraud and deception, in depriving him of the right of subscription for shares in a corporation. *Lallande v. Ins. Co.*, 9 La. 326.

A stipulation that a vendor shall transfer his stock on the books of a bank means only that he shall cause his vendee to be recognized as a stockholder on its books; the contract is complete when the act of sale is made under the authority, and the application to transfer approved by a majority of the directors; and the vendee is bound to pay the bank an amount due on the stock, and assumed by him. *Bank v. Desban*, 2 Rob. 486.

A purchaser of stock cannot annul the sale without putting his vendor in default, after qualifying himself to receive that transfer by complying with regulations prescribed for such transfer. *Jones v. Sidle*, 5 Rob. 65. Measure of liability for refusal to allow a transfer of stock, since depreciated, is the amount of the depreciation at time of trial. *Byrne v. Bank*, 9 Rob. 433.

When the State is a stockholder it has the same rights as other stockholders, and no more. *State v. Bank*, 6 La. 759. Where charter provides for forfeiture of stock for non-payment of installments, such forfeiture is optional with the corporation. *Gulf Co. v. Vivant*, 6 La. Ann. 305.

A subscriber cannot take advantage of informalities in his subscription, unless in case of fraud or error. *Id.*

Where subscription is to be paid in installments, obligation to pay same is suspended until calls are made. *Purton v. Carrollton Co.*, 3 La. Ann. 19.

Where stock is issued in contravention of charter, a purchaser cannot set up such violation as



Charter of incorporation — R. S., § 685.

a defense. *Canal Bank v. Holland*, 5 La. Ann. 363.

Where not more than two calls are to be made in any successive twelve months, the period is to be calculated from date of first call, so that three calls may be made in thirteen successive months, provided but four be made in two years. *Dinkgrave v. Vicksburg Co.*, 10 La. Ann. 514.

Parol declarations of officers of a company at time of subscription cannot invalidate it, unless they establish fraud on part of company, inducing error on part of subscriber. *Vicksburg Co. v. McKean*, 12 La. Ann. 638.

The charter and the subscription constitute a contract between the corporation and its stockholders. By this contract their mutual rights and obligations are fixed, and directors have no power to change it without stockholders' consent. *Stark v. Burke*, 9 La. Ann. 341.

The act of incorporation of a corporation limited must show the limitation. *Lehman v. Knapp*, 29 So. Rep. 674.]

Sixth. To make and establish such by-laws for the proper management and regulation of the affairs of the corporation as may be necessary and proper;

Regulations of corporation binding on its members. R. C. C., art. 445.

And any corporation established for drainage, sewerage and land reclamation may, by contract with the owner of real property, duly recorded, have a privilege on said property for the price and value of the work done and facilities furnished."

§ 685. Every charter of incorporation shall contain, first, the name and title of the corporation, and the place chosen for its domicile; second, a description of the purposes for which it is established, the nature of the business to be carried on, and the designation of the officer on whom citation may be served; third, the amount of the capital stock, the number of shares, the amount of each share and the time when and the manner in which payment on stock subscribed shall be made; fourth, the mode in which the elections of directors or managers shall be conducted; fifth, the mode of liquidation at the termination of the charter.

Not to engage in any business other than that authorized in charter. Const., art. 265. See R. S., §§ 686-688. Charter, when forfeited. R. S., § 731. Domicile of corporation. Id., § 740. Meeting and election of directors. Id., § 741. Name to be adopted. R. C. C., art. 432. Service of citation. C. P., art. 191.

[A corporation cannot subscribe for stock in another company, foreign to the object of its own charter. *Steamship Co. v. Dry Dock Co.*, 28 La. Ann. 173.

If subscription books are closed by resolution of directors, no subscription can lawfully be made thereafter. *State v. Gas Light Co.*, 24 La. Ann. 318.

Provision in charter that no transfer of stock shall be valid until entered in a book kept for that purpose, is intended for protection of the corporation, and of third persons purchasing without notice of any previous transfer, but as between owner of the stock and his vendee, a transfer, not in conformity to such provisions, is sufficient to pass equitable title and divest the vendor of all interest in the stock. *Black v. Zacharie*, 3 How. (U. S.) 483.

A transfer of stock regularly made on the books, and recognized by the directors, estops the company from calling on the transferees for any assessment. *Ellison v. Schneider*, 25 La. Ann. 436.

No compensation can be pleaded by a bank, based on the indebtedness of a stockholder, so as to prevent the transfer of his stock sold under execution by the sheriff. Although the by-laws passed by directors after the issuance of the stock prohibit a transfer when the stockholder is indebted to the bank. *Bryon v. Kendall*, 22 La. Ann. 99.

When the intention and spirit of a resolution to open subscriptions for stock is that the stock be paid for within the delay during which the subscription is open, a stockholder who has notified his intention to subscribe before the delay, and made a tender of the amount after the delay allowed for subscription, cannot compel the company to deliver the stock. *Hart v. R. R. Co.*, 30 La. Ann. 758.

Stock of defendant in a private corporation having been declared forfeited, he cannot be called upon by the creditors for any unpaid balance. *Macaulay v. Robinson*, 18 La. Ann. 619.

Even if penalty for non-payment of stock is its forfeiture, the corporation may enforce payment by suit as long as the stock is not declared forfeited. *Steamship Co. v. Briggs*, 27 La. Ann. 318.

A stockholder, when sued on his stock note to pay the liabilities of an insolvent corporation, must, to be relieved, show that the contribution called for is not needed. *Peychaud v. Weber*, 25 La. Ann. 136.

Plaintiff, who was a party to all the proceedings for the distribution of certain shares of stock between the stockholders, cannot be listened to when urging technical irregularities in the proceedings, so as to enrich himself at the expense of others. *Bach v. Levee Co.*, 25 La. Ann. 228; *Southworth v. Same*, 30 id.

Heirs of a stockholder cannot compel the company to transfer their ancestor's shares in their name, without producing the original certificate, in accordance with the by-laws regulating the transfer of shares. *State v. R. R. Co.*, 30 La. Ann. 308.

Stockholders have no right to enter into any combination to divest the company of its property and obtain it for themselves; they are entitled to no share of the capital stock until the debts are paid. *Cochran v. Dry Dock Co.*, 30 La. Ann. 1365; *Jackson v. Ludeling*, 21 Wall. (U. S.) 616.

Where charter requires stock to be paid for in cash, and that no certificate shall issue until such payment is made, it is a sufficient compliance with the statute prescribing that the charter must set forth "the time when and the manner in which" the stock shall be paid for. *R. R. Co. v. Frank*, 39 La. Ann. 707; s. c., 2 So. Rep. 310.

A bona fide sale of stock, coupled with a power of attorney to vendee to transfer it on books, is made complete by delivery to vendee of certificate. Not necessary that notice of sale should be served on the corporation, or that an actual transfer should have been made on company's books. *Smith v. Crescent, etc., Co.*, 30 La. Ann. 1378.

In order to make the pledge of a certificate of stock valid as to third persons, not necessary to give notice of the pledge to the company. *Ins. Co. v. Marine, etc., Co.*, 31 La. Ann. 149.

Where knowledge of a fact by a corporation is necessary, knowledge of president and other chief officers is sufficient. Id. A corporation cannot be held to knowledge of ownership of stock by any transfer of a certificate, merely because he, through an agent, voted at an election. *Friedlander v. Slaughter-House Co.*, 31 La. Ann. 523.

Where certain stock of a corporation, standing on its books in the name of a judgment debtor, is seized and sold by the sheriff as the debtor's property, and a judicial tribunal, of competent jurisdiction, of last resort, after a fair contest in good faith by the corporation, orders the stock to be transferred to the purchaser under such seizure and sale, the corporation cannot be liable to the holder of the certificate of the stock, who took no steps to protect himself. Id.

Liability of person refusing to surrender a list

Charter of incorporation; forfeiture for insolvency — R. S., §§ 686-688.

of subscribers to corporate stock, how determined. *Brewing Co. v. Roebinger*, 40 La. Ann. 277; s. c., 4 So. Rep. 82.

A corporation is bound to employ competent and faithful transfer agents, and is responsible to stockholders for any negligence or fraud of such agents, to their injury. In case of illegal and unauthorized transfer of stock to a third person, the injured stockholder may contest the title of the transferee, contradictorily with both the latter and the corporation; but he is not confined to this remedy. He may sue the corporation alone for the value of his stock illegally transferred. *Woodhouse v. Ins. Co.*, 35 La. Ann. 238.

Under article 2397 the mandate to sell must be "express and special." An attempt to imply authority to sell from other acts of agents of a different character, done without authority and yet approved by principal, is in the very teeth of the Code, nor do such facts operate as an estoppel. *Id.*

In a certain sense shares of stock represent an interest in the corporate estate, and conveyance thereof is a conveyance of such interest. *State v. R. R. Co.*, 34 La. Ann. 947.

The transferor of stock without representation of specification as to the particular property held by the corporation warrants only his title to the stock, and not the title of the corporation to the property held by it. *Id.*

The value of stock cannot be recovered as the price thereof, where it is not shown that a contract to sell and purchase was entered into directly, or by an authorized agent. *Crossley v. Bank*, 38 La. Ann. 74.

No loss suffered by a stockholder will give rise to a claim for damages against directors, in consequence of a call authorized by charter. *Succession of Woods*, 30 La. Ann. 1002.

A corporation is liable for damages caused by wrongful cancelling of a certificate of its stock by its president and secretary. *Ins. Co. v. Marine, etc., Co.*, 31 La. Ann. 149.

Subscriptions to stock in company whose capital is fixed at a certain sum and shares limited to a certain number, and whose charter provides for payment of shares as may be determined by directors, cannot be compelled to pay until whole capital has been subscribed and board has called for payment, unless it is shown that, by their acts, they have waived their rights in this regard. *R. R. Co. v. R. R. Co.*, 42 La. Ann. 370; s. c., 7 So. Rep. 627.

Stockholders have an uncontrollable right to dispose of, at their pleasure, their shares. *Trisconi v. Winship*, 43 La. Ann. 45; s. c., 9 So. Rep. 29. And this, though they be members of board of directors. *Id.*

In absence of fraud or demonstrable error, a subscriber for stock in a corporation cannot defend an action on his subscription by impeaching its existence and capacity. *Homestead Co. v. Linigan*, 46 La. Ann. 1119; s. c., 15 So. Rep. 369.

Secretary having stamped on certificates of stock that same were certified by him, and issued to the stockholders, will be estopped from proving that any of such shares were fraudulently issued without consideration. *Wisner v. Delhi Co.*, 46 La. Ann. 1223; s. c., 15 So. Rep. 690.

Though stock of a corporation after its creation may be held by a less number of shareholders than the law would have required for organization of the same corporation, the corporation continues to exist. In *re Belton*, 47 La. Ann. 1614; s. c., 18 So. Rep. 642.

A subscription to stock by a municipal corporation, though unauthorized by its charter, will be binding on it, if subsequently sanctioned by the legislature. *Municipality v. Theater Co.*, 2 Rob. 209.

The dissenting votes of a few dissatisfied stockholders will not be heard in the almost unanimous assent of their fellow corporators to an amendment of the charter. *Pollock v. Bank*, 12 La. Ann. 228; *Le Beau v. Bank*, *id.* 231.

A corporation which has acted under an amended charter and issued bonds in accordance therewith, and persons who have assumed subscriptions to the increased capital stock, will be estopped from denying validity of amended charter. *Haynes v. Wall*, 13 La. Ann. 258.]

§ 686. The charters of corporations, and the original subscriptions made for the purpose of organizing them, shall be recorded in the office of the recorder of mortgages, or other officer exercising his functions, at the place selected for the domicile of the corporation, and shall be published in a newspaper at its domicile once a week, at least for thirty days, but it shall not be necessary to publish the names of the subscribers; and any subscriber may present the charter and subscriptions for record with the recorder of mortgages.

Copies of records as evidence. R. S., § 694.

[The failure, in forming a corporation, to obtain the authorization or certificate of the district attorney or judge, and to have the act of incorporation duly recorded, is not a mere informality, but a substantial omission which strikes the act of incorporation with nullity. *Field v. Cooks*, 16 La. Ann. 154.]

§ 687. It shall be lawful for the stockholders of any corporation, at the general meeting convened for that purpose, to make any modifications, additions or changes in their act of incorporation, or to dissolve it with the assent of three-fourths of the stock represented at such meeting; any such modification, addition, change or dissolution shall be recorded as required by the preceding section.

See R. S., § 685.

§ 688. They shall forfeit their charter for insolvency, evidenced by a return of no property found on execution; and in such case it shall be the duty of the district court, at the instance of any creditor, to decree such forfeiture, and to appoint a commissioner for effecting the liquidation, whose duty it shall be to convert all the assets of the company, including any unpaid balance due by stockholders on their shares, into cash, and to distribute the same under the direction of the court amongst the parties entitled thereto, in the same manner, as near as may be, as is done in cases of insolvency of individuals.

See Const., art. 262, and cross-references. Mode of liquidation to be contained in charter. R. S., § 685. Charter, when forfeited, proceedings, etc. R. S., § 731.

[Proceedings by one party to forfeit the charter of a corporation in the parish of New Orleans, does not divest the other district courts of jurisdiction to entertain similar proceedings brought by other parties. *State v. District Court*, 20 La. Ann. 574.

No one but the attorney-general can urge the forfeiture of a bank's charter. *Riggin v. Bank*, 18 La. Ann. 677.

Under laws of Louisiana, a corporation has no right to make a voluntary cession of its assets. *Jeffries v. Iron Works Co.*, 18 La. Ann. 685; 15 *id.* 19.

A corporation cannot be dissolved by a simple resolution adopted by its members; nor can a majority base a demand for forfeiture of charter on such a resolution, which, in contemplation of law, was a wrongful act, and as such gives no right of action. *Curien v. Santini*, 16 La. Ann. 27.

## Liquidation on dissolution; use of streets — R. S., §§ 688, 689.

A corporation may be dissolved, first, by an act of legislature on certain conditions; second, by a forfeiture of its charter, judicially ascertained at the suit of the State. *Id.*

A decree of a State court, declaring a charter forfeited, constitutes no bar to a proceeding in involuntary bankruptcy under the General Bankrupt Law. *Thornhill v. Bank*, 1 Woods, 1.

Property of an extinct corporation belongs to the individual members. *Burke v. Wall*, 29 La. Ann. 39.

The appointment of a receiver for a corporation on an ex parte application, without even alleging its insolvency, is absolutely null and carries with it no right to receive the assets or revenues of the company. *Turgeon v. Brady*, 24 La. Ann. 348.

Liquidators of a corporation, appointed by the stockholders, cannot be displaced by liquidators appointed by the court; their election must first be annulled. *Follett v. Field*, 30 La. Ann. 161.

As a general rule, courts have no jurisdiction to appoint receivers for corporations in absence of express statutory authority. *Baker v. R. R. Co.*, 34 La. Ann. 734.

In absence of any provision to that effect, either in the general law or charter, a franchise cannot be levied upon for debts. *R. R. Co. v. Delamore*, 34 La. Ann. 1225.

A creditor of a corporation, suing to forfeit its charter on ground of its insolvency, must, before he can demand the provisional appointment of a receiver or judicial sequester, under above section, prove that the corporation is the special kind of a corporation subject to a forced liquidation under that section. *Bothick v. Society*, 31 La. Ann. 63.

Where a petition is filed, praying for certain alleged reasons, the forfeiture of the charter of a banking corporation, an order of court, which does not decree the forfeiture, but which merely appoints commissioners to take charge of the corporate assets, cannot be construed as directing the liquidation of the affairs of the corporation. *State v. Judge*, 31 La. Ann. 823.

When a judgment dissolving a corporation, forfeiting its charter and recognizing the liquidators appointed by the company, and authorizing them to act, will not be disturbed in the absence of any complaint by either creditors or stockholders. *State v. Coach Co.*, 35 La. Ann. 245.

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The appointment of a judicial sequester to wind up affairs of a loan and pledge association is illegal. *Mahan v. Benton*, 30 La. Ann. 1401.

The court may, on its own motion, appoint a liquidator or receiver of a corporation, where its charter makes no provision for its liquidation and the necessity for its liquidation shall arise. *In re Mechanics' Society*, 31 La. Ann. 627.

When a foreign corporation has been decreed insolvent, and an assignee or trustee appointed to it under the laws of and in the State where it was created, the assignee or trustee so appointed has the right to sue for the assets of the insolvent corporation, and stand in judgment in the courts of Louisiana. *Life Assn. v. Levy*, 33 La. Ann. 1203.

Courts of this State are not without jurisdiction over subject-matter of appointing receivers to corporations; but they should exercise such jurisdiction only in proper cases. Where charter vests the liquidation in the stockholders, through commissioners elected by them, and where the stockholders consent to appointment of receivers by the court at suit of creditors praying therefor, the judgment of the corporation appointing such receivers will not be disturbed on the appeal of creditors. *In re Savings Bank*, 35 La. Ann. 196.

Where a court has appointed a person receiver, who absents himself and fails to file the bond re-

quired under order of court, it is within discretion of the court to remove him and appoint another. *Id.*

Appointment of a receiver to a corporation by one district court, when it appears that the matter of the liquidation of the same corporation was pending in another court for the same parish, is the act of a court without jurisdiction over the subject-matter, and is, therefore, absolutely null and void. *Weymouth v. Roselius*, 36 La. Ann. 527.

A court is without authority to order the liquidation of a bank, and the transfer of its assets to the commissioners until the propriety of such an order has, on proper inquiry, been judicially ascertained. *State v. Bank*, 31 La. Ann. 536.

Corporations have no right, under laws of Louisiana, to make a voluntary cession of their assets. *Jeffries v. Iron Works Co.*, 18 La. Ann. 685; 15 *id.* 19. A corporation cannot be dissolved by a simple resolution adopted by majority of its members; nor can the majority base a demand for forfeiture of its charter on such a resolution which, in contemplation of law, was a wrongful act, and as such gives no right of action. *Curien v. Santini*, 16 La. Ann. 27.

Although corporations possess inherent power of dissolution at law, that right does not carry with it authority of impairing the obligation of contracts. The liquidation, while it deprives creditors of power to compel specific performance, leaves an equitable remedy for the recovery of damages unimpaired. *Schleider v. Dielman*, 44 La. Ann. 462; s. c., 10 So. Rep. 934.

Above section does not authorize forfeiture of charter of the corporation and appointment of a receiver by ex parte order without notice. The statute discussed and construed. *Ober v. Mfg. Co.*, 44 La. Ann. 579; s. c., 10 So. Rep. 792.

The cessation of a corporation cannot be brought about by an application on its own behalf nor by creditors acting adversely and under a respite improvidentially granted. *Lumber Co. v. Creditors*, 19 So. Rep. 136.

Shareholders of a corporation who carried on a commercial partnership in addition were not excused from liability as partners because of their holding stock. *Lehman v. Knapp*, 20 So. Rep. 674.

A creditor of a corporation held not estopped from holding the shareholders personally liable after ascertaining that they were liable as commercial partners. *Id.*

Where the corporate business was ended, though the company was in the hands of liquidators, one of the proprietors was held entitled to sequestration or other conservator writ. *Eltringham v. Clarke*, 21 So. Rep. 547.

When the articles prescribe the manner of winding up the corporation, they should be followed. *Pringle v. Construction Co.*, 21 So. Rep. 515.

Action of majority of members in winding up the company held valid. *Id.*

§ 689. (As amended April 10, 1880.) No railroad, plankroad, canal or works of drainage, sewerage and land reclamation shall be constructed through the streets of any incorporated city or town, without the consent of the municipal council thereof; and such council giving such consent to any corporation formed for the purpose of drainage, sewerage and land reclamation may, in the interest of public health and cleanliness, pass all needful ordinances and police regulations to make effective the plan of sewerage and drainage it may so adopt, with reference to all houses and lands within the municipal limits.

See R. S., § 631.

## Liability of stockholder; issue of bonds — R. S., §§ 690-692.

§ 690. No stockholder shall ever be held liable or responsible for the contracts or faults of such corporation in any further sum than the unpaid balance due to the company on the shares owned by him; nor shall any mere informality in organization have the effect of rendering a charter null or of exposing a stockholder to any liability beyond the amount of his stock.

See R. C. C., art. 437.

[A corporation is not a partnership; the members can only be compelled to pay the corporate creditors the amount due by them to the corporation. *Monaghan v. Hall*, 18 La. Ann. 310.]

But stockholders in a corporation which was defectively organized are individually liable as partners for a tort committed by such de facto corporation. *Vredenburg v. Behan*, 33 La. Ann. 627.

Agreements between officers and stockholders are not binding on creditors. *Peychaud v. Hood*, 23 La. Ann. 732.

No act or contract on part of stockholders can defeat rights of corporate creditors, and they are bound to pay the full price of the shares subscribed by them. *Same v. Lane*, 24 La. Ann. 405. The members of a corporation to transport persons and property are not liable individually or in solidum for debts of the corporation. *Reinhold v. Ludeling*, 29 La. Ann. 552.

Members of a corporation are not liable to be sued, as individuals, for corporate debts. *Glen v. Breard*, 35 La. Ann. 875.

The rights and duties of stockholders grow out of the contract of subscription for stock. *Chase v. Bank*, 44 La. Ann. 639; s. c., 10 So. Rep. 379.

A stockholder of an insolvent corporation cannot, by a donation to an insolvent person, escape liability for his unpaid stock. *Mandion v. Ins. Co.*, 11 Rob. 177.

Where a transfer, though absolute on its face, is not so made as to preclude a party, who has retransferred it, from showing that it was intended only as security, he will not be liable to company's creditors for a balance due on the stock. *Id.*

A stockholder cannot avail himself of the misbehavior of the corporation to avoid his own contract. *Municipality v. Theater Co.*, 2 Rob. 269.

One who signs an agreement to take stock, thereby promises to pay the full amount of every share; and an action lies to recover it, either to carry on business or to pay company debts. *Cuculla v. Ins. Co.*, 2 Rob. 57.

He cannot avail himself of his own neglect to pay a required installment at time of subscribing. This might authorize his subscription to be annulled, but cannot shield him from its payment. *Red River Co. v. Young*, 6 Rob. 39.

A stockholder, sued on his note for stock, cannot urge any informality in the organization of the corporation, or the unconstitutionality of its charter. *Pascagoula Co. v. West*, 13 La. Ann. 545.

Where stockholders refuse to elect directors, or elect those who will not call in stock to pay debts, any creditor may compel such stockholders to pay in so much as may be necessary to pay debts. *Cuculla v. Ins. Co.*, 2 Rob. 57.

A corporation can never be dissolved by a refusal to pay stock, by non-user, or otherwise, so as to defeat the rights of creditors. *Brown v. Ins. Co.*, 3 La. Ann. 177.

Where forfeiture of stock of delinquent stockholders is a means given the company for its own protection, without its action, they are not disfranchised, and may be garnished by judgment creditors of the corporation. *Brode v. Ins. Co.*, 10 Rob. 440.

Stock transferred to another, to enable him to raise money thereon, is liable to the execution of his creditors. *Page v. Poree*, 3 Rob. 439.

Creditors are entitled to the whole stock to secure any judgment against the corporation, and

the latter cannot, by any act to their prejudice, liberate stockholders from the full amount of their subscriptions. *Brode v. Ins. Co.*, 10 Rob. 440.

Unauthorized forfeiture by a board of a stockholder's share does not destroy the latter's liability to creditors. *Dixon v. Ins. Co.*, 11 Rob. 253.

Where no period is fixed by charter for payment of a subscription, a creditor who wishes to enforce payment of a balance due must resort to a direct action. *Brown v. Ins. Co.*, 3 La. Ann. 177.

Reduction of stock to the amount paid in at a certain period, accepted by stockholders, will exonerate them from liability beyond the reduced stock, as to subsequent creditors. *Hepburn v. Bank*, 4 La. Ann. 88; *Palfrey v. Paulding*, 7 id. 363; *Stark v. Burke*, 9 id. 341.]

§ 691. In all cases where railroads, plankroads or canals shall cross any highway, the corporation shall so construct the works as not to hinder, impede or obstruct its safe and convenient use; and in all cases where railroads, plankroads or canals shall be constructed or dug across any plantation or land in cultivation, or that may be cultivated, the corporation shall so construct the work as not to hinder, impede or obstruct the drainage of the land; and if any railroad or plankroad shall, in its course, cross any tide waters or navigable rivers or streams, the company may erect for the sole and exclusive use of such railroad or plankroad, the bridges required for crossing, but such bridges shall be so constructed as not to obstruct or necessarily impede the navigation of said waters or streams.

Railroad corporation may construct. Const., art. 271; see R. S., § 689.

§ 692. (As amended July 7, 1894.) Any railroad, plankroad, turnpike, canal, elevator, or warehouse, company, for drainage, sewerage, land reclamation and levee building, water works or electric lights and power company, or any bridge company or bridge and railway company, established under the laws of this State, whether under and by special or general act, may borrow from time to time such sums of money as may be required for construction, repair or acquisitions of property, or franchises, and for this purpose may issue bonds or other obligations, secured by mortgage, or pledge, as the case may be, of the franchises and all the property, real and personal, and incomes, revenues, contributions and receipts of said companies, and payable in such terms and such times and places as the board of directors, trustees, managers or commissioners may direct or designate, with power to sell, pledge or otherwise dispose of said bonds on such terms as the companies respectively may direct or deem expedient.

See Const., art. 266.

Upon sale of the property and franchises of a corporation, under a decree founded upon a mortgage, or under a process upon a money judgment, immunity from taxation provided for in the act of incorporation does not accompany the property in its transfer to the purchaser. *Morgan v. Louisiana*, 13 U. S. 217.

Mortgages, etc.; forfeiture of charter; taxation — R. S., §§ 693-695, 725, 731, 733-735.

Purchasers of all the rights and franchises of a corporation do not, for that reason, become invested with the corporate powers of the vendee. An obligation issued by such purchasers under the style of the vendee will bind the purchaser individually. *Chaffe v. Ludeling*, 27 La. Ann. 610.

An insurance company, with power to convert bonds and stocks into cash when needed to pay risks, has right through its president to borrow money and pledge said stock as collateral security. *Bezou v. Pike*, 23 La. Ann. 788.]

§ 693. A mortgage made by any company, as aforesaid, shall be binding in the several parishes through which a railroad may pass by the record of the mortgage in the parish where the principal office or domicile of the company may be located, and such mortgage need not be reinscribed to continue it in force. The president and directors of any company may confer on the holder of any bond or bonds issued for money for the use of said company the right to convert the principal due thereon into the stock of said company at any time, not exceeding ten years from the date of said bond or bonds, under such regulations as the president and directors may adopt; Provided, That nothing in this act shall be so construed as to authorize an increase in the capital stock of any railroad company.

§ 694. Copies of all the books and records kept by the several railroad companies in this State, including extracts from the stock books and minutes of the proceedings of the director, certified by the secretaries of said companies, under the seal of the company, shall be received in all the courts of this State as evidence in place of the originals.

See R. S., § 684, subd. 2, and cross-references.

[Parol evidence is admissible to show the resolutions of a corporation, when the same have not been entered on the minutes. *Donnelly v. Church*, 26 La. Ann. 738.

Stockholder has legal right to inspect corporate books. *Legendre v. Brewing Assn.*, 45 La. Ann. 669; s. c., 12 So. Rep. 837. But the error of the secretary in refusing to permit him to inspect the books is not of itself ground for damages against the corporation. *Id.*

Prayer of a person for a mandamus to compel an inspection of corporate books will be refused when no just or useful object is alleged or proved, and it is not shown in what way the interests of the corporation or the public are to be promoted. *Hatch v. Bank*, 1 Rob. 470.

Omissions in corporate minutes may sometimes be supplied by parol testimony. *Vicksburg Co. v. Ouachita*, 11 La. Ann. 649; *Prothro v. Minden Sem.*, 2 id. 939.

Stockholder in a bank incorporated under the Free Banking Law has a right, at proper hours, to inspect the discount book, to see whether business is being properly conducted. *Cockburn v. Bank*, 13 La. Ann. 289.]

§ 695. The governor of the State of Louisiana and the mayor of the city of New Orleans be, and they are hereby, authorized and required to cast the vote of the stock owned by the State of Louisiana and the city of New Orleans, respectively, in all meetings of stockholders for the election of directors of said companies, in the same

manner and to the same extent as individuals and private stockholders vote therein.

Meetings, elections, etc. R. S., § 741; see R. S., § 1660.

[Officers of a corporation have no right to vote on the shares held by it. *Monseaux v. Urquhart*, 19 La. Ann. 485.]

§ 725. In all cases where any corporation shall commit trespass or do anything for which an action for damage lies, it shall be liable to be sued in the parish where such damage is done or trespass committed.

See R. S., § 684, subd. 2, and cross-references.

§ 731. Whenever the charter of any corporation in this State shall be decreed forfeited by any competent court, the district attorney of the district shall forthwith inform the governor of the fact, who shall thereupon appoint a liquidator to take charge of and liquidate the affairs of the corporation, as in case of insolvencies of individuals. In case of death, resignation or removal of any liquidator so appointed, the governor shall fill the vacancy; and in case of refusal of any person appointed to act as liquidator, he shall appoint the district attorney of the district, who shall be dispensed with giving bond and security. This section shall not apply to banking or other corporations whose liquidation is otherwise provided for by law.

See Const., art. 262, and cross-references. Charter forfeited for formation of trust. Act of 1892, at p. 28.

[The property of an extinct corporation belongs to the individual members. *Burke v. Wall*, 29 La. Ann. 39.]

§ 733. The property, real or personal, of all incorporated companies liable to taxation, except capital stock, shall be assessed in the parish in which it may be, in the same manner as that of individuals.

See Const., art. 228, and cross-references.

§ 734. The capital stock, not invested in real estate, of every incorporated company, liable to taxation, shall be assessed in the parish where the principal office or place for transacting the financial concerns of the company shall be, or if the company have no such office, then in the parish where the operations of the company shall be carried on, or its agents shall keep their place of business.

See Const., art. 228, and cross-references.

§ 735. When the company is not incorporated in this State, but is doing business through an agent, it shall be subject to all the provisions of preceding sections, except that it shall not be assessed on its capital stock, but shall be assessed on all its prop-

Taxation: meetings — R. S., §§ 736-738, 740, 741, 1660.

erty owned, held or due in this State, whether it consists in real or personal estate, money, bills of exchange, bonds, notes or accounts, or other evidences of debt.

See Const., art. 228. Foreign corporation to forfeit charter, when. Act of 1892, at p. 28.

[A foreign corporation having an agent, and placing money in bank, subject to his check, held liable to taxation on such fund. *Banana Co. v. Board of Assessors*, 21 So. Rep. 627.]

§ 736. The president, cashier, secretary, or agent of any money or stock corporation, whether incorporated by this State or any of the United States, or by a foreign government, shall, on or before the first day of March in each year, make and deliver to the State collectors or assessors, or one of them, of the parish or district in which such company is liable to be taxed, according to law, a written statement, specifying under oath:

First. The real estate, if any, owned by such company, when the same is situated in this State;

Second. The capital stock actually paid in and not invested in real estate;

Third. The place of its principal business, or where its principal operations are carried on in which it is liable to be taxed.

See Const., art. 228.

[Liability of person refusing to surrender a list of subscribers to corporate stock, how determined. *Brewing Co. v. Boebinger*, 40 La. Ann. 277; s. e., 4 So. Rep. 82.]

§ 737. The State collector or assessor shall enter all incorporated companies, from which such statements shall have been received by them, and the property of such companies, in the assessment-roll in the following manner: In the first column they shall enter the name of the company liable to taxation on its capital or otherwise; in the second column, the quantity of real estate owned by the company and situated in their parish or district; in the third column, the actual value thereof, estimated as in other cases; in the fourth column, its capital stock paid in and its value, (to be ascertained by the assessor or State collector, by the sales of its stock, or in any other manner, and not invested in real estate, situated within the State, and then belonging to it); in the fifth column, they shall put the aggregate value for which the company is liable to be taxed, which value, thus ascertained, shall be levied, except as is provided by law.

See Const., art. 228.

§ 738. All licenses and taxes assessed by law on the property of any person, firm, company or corporation, are hereby declared a lien and privilege on the real property of such person, firm, company or corporation for his or their entire tax, any alienation thereof or incumbrance thereon notwith-

standing; and shall exist in favor of the State and parish for the amount of taxes assessed, and shall be paid by preference to all mortgages and incumbrances.

See Const., art. 228, and cross-references.

§ 740. Every corporation organized, or which may hereafter be organized under and by virtue of any law of this State, shall establish its domicile at some place within the State of Louisiana, and not elsewhere.

See Const., art. 264, and cross-references.

[A corporation created under laws of a sister State has right to sue and stand in judgment in courts of Louisiana. *Life Assn. v. Levy*, 33 La. Ann. 1203.]

§ 741. Every such corporation shall, from and after the passage of this act, hold all its meetings for the transaction of business appertaining to its corporate purposes or capacity, whether of its stockholders at large, for election of officers, or other purposes, or of its directors, managers, trustees, or other officers charged with the direction of its affairs, at the place of domicile of said corporation, and any such meeting held elsewhere, and any business transacted at any meeting held elsewhere, shall be unlawful and of no effect.

See R. S., § 684, subd. 5. Vote of stock owned by State cast by whom. R. S., § 695. Act of majority, act of whole. R. C. C., art. 444.

[When a resolution of stockholders ratifying sales of corporate property is produced, officers who urge the invalidity of the ratification, because the meeting was illegally called, must show such illegality. *Dunn v. Building Co.*, 8 La. 488.]

### Domicile.

Sec. 1205. Corporations to establish their domicile in Louisiana.

1206. Meetings, elections, etc., to be held at place of domicile.

§ 1205. (Identical with section 740.)

§ 1206. (Identical with section 741.)

### Governor.

Sec. 1660. Governor of Louisiana and mayor of New Orleans to vote stock owned by State or city.

§ 1660. The governor of the State of Louisiana, and the mayor of the city of New Orleans be, and they are hereby authorized and required, to cast the vote of the stock owned by the State of Louisiana, and the city of New Orleans respectively, in all meetings of stockholders for the election of directors of said companies, in the same manner and to the same extent as individual and private stockholders vote therein.

See R. S., § 695.

Trespass; usurpation of, and intrusion in office — R. S., §§ 2581, 2593-2596, 2601-2605.

### Offenses and Quasi Offenses.

Sec. 2581. When a corporation may be sued in cases of trespass.

§ 2581. In all cases where any corporation shall commit trespass or do anything for which an action for damage lies, it shall be liable to be sued in the parish where such damage is done or trespass committed.

See R. S., § 725.

### Office.

### Usurpation, Intrusions into, and Unlawful Holding of Office.

Sec. 2593. How information shall be brought.

2594. Duty of district attorney and attorney-general.

2595. Service and answer.

2596. Interested person shall be joined with the State.

2601. All claimants may be joined in one action.

2602. Defendant liable in damages.

2603. Repealing clause.

2604. Appeals.

2605. Trials for summary.

§ 2593. An action by petition may be brought before the proper district court or parish court by the district attorney or district attorney pro tempore, and for the parish of Orleans by the attorney-general or any other person interested, in the name of the State, upon his own information or upon the information of any private party against the party or parties offending, in the following cases:

First. When any person shall usurp, intrude into or unlawfully hold or exercise any public office or franchise within this State; or

Third. When any association or number of persons shall act within this State as a corporation without being duly incorporated.

See Const., art. 262, and cross-references, and note to R. S., § 131.

[Sections 2593 et seq. do not provide for forfeiture of charters at instance of private persons, even when they are parties interested. State v. Atty-Gen., 30 La. Ann. 954.]

§ 2594. In the cases mentioned in section 2593 it is hereby made the duty of the district attorney or district attorney pro tempore of the parish in which the case arises, and for the parish of Orleans of the attorney-

general, to bring action against the offending party or parties, when so required to do.

§ 2595. Service shall be made in such cases as are provided for in the foregoing sections, the same as in other civil suits, and the answer of the defendant shall be filed within the legal delays as in other suits; such cases to be tried by preference over all other cases, without being fixed for trial after issue joined.

§ 2596. When an action shall be brought by virtue of the provisions of this act by the district attorney or district attorney pro tempore or the attorney-general, as the case may be, on the relation or information of any person interested, the name of such person shall be joined with the State as plaintiff.

§ 2601. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons in the same action in order to try their rights to such office or franchise.

§ 2602. When defendant, whether a person or a corporation, against whom such action shall have been brought, shall be adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against such defendant, and such damages as are proven to have been sustained.

§ 2603. All laws or parts of laws in this State touching on the subject of quo warranto, conflicting directly or indirectly with any of the provisions of this act, be and the same are hereby repealed.

§ 2604. Appeals to the supreme court may be taken from any of the actions provided for in the foregoing sections, the same as in other cases. But all such cases shall take preference when they come before the supreme court over all other cases in the order of trial, and shall be made returnable to the supreme court, either in New Orleans or at one of its sessions in the country, on motion of either of the parties.

§ 2605. All the cases coming under the provisions of this law may be tried before a judge of the district in chambers, or at a special term called by said judge on legal notice being given the parties interested; and if required by either party, the judge may order a special jury, to be summoned according to law, to try such case.

## CIVIL CODE OF LOUISIANA—1870.

## Book I. Of Persons.

## TITLE X. OF CORPORATIONS.

## CHAPTER I.

## Of the Nature of Corporations, of their Use and Kinds.

- Art. 427. "Corporation," defined.  
 428. The use of corporations.  
 429. Corporations are of two kinds, political and private.  
 430. Also, either civil or religious.  
 431. Civil and religious corporations defined.

Art. 427. A corporation is an intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues always the same, notwithstanding the change of the individuals which compose it, and which, for certain purposes, is considered as a natural person.

"Corporation" defined. Const., art. 268, and cross-references; see R. S., § 684.

Art. 428. The use of corporations is to contribute by the union and assistance of several persons, to the promotion of some object of general utility, although they be at the same time established for the advantage of those who are members of such corporations.

Purposes for which corporation formed. R. S., § 683.

Art. 429. Corporations are of two principal kinds; political and private.

Political corporations are those which have principally for their object the administration of a portion of the State, and to whom a part of the powers of government is delegated to that effect.

All others are private corporations.

See Const., art. 268, and cross-references.

Art. 430. Corporations are also divided into civil and religious, and this distinction results, as well from the quality of the persons who generally compose these kinds of corporations, as from the difference of the object of their establishment.

See Const., art. 268, and cross-references.

Art. 431. Civil corporations are those which relate to temporal police; such are the corporations of the cities, the companies for the advancement of commerce and agriculture,

literary societies, colleges or universities founded for the instruction of youth, and the like. Religious corporations are those whose establishment relates only to religion; such are the congregations of the different religious persuasions.

See Const., art. 268, and cross-references.

## CHAPTER II.

## Of the Rights and Privileges of Corporations, and of their Incapacity.

- Art. 432. Corporate name must be adopted. Must sue and be sued by such name.  
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 445. Regulations of corporations are obligatory upon all its members.  
 446. Corporations unauthorized by law cannot appear in court.

Art. 432. Corporations must not only be authorized by the legislature, or established according to law, but a name must be given to them; and it is in that name they must sue or be sued, and do all their legal acts, although a slight alteration in this name be not important.

See R. S., § 684, subd. 192. Charter to contain name. R. S., § 685.

Art. 433. Corporations legally established are substituted for persons, and their union which renders common to all those who compose them, their interests, their rights and their privileges, is the reason why they are considered as one single whole. Hence it follows that they may possess an estate, and have a common treasury for the purpose of depositing their money; that they are capable of receiving legacies and donations; that they may make valid contracts, obligate others and obligate themselves toward others; exercise the rights which belong to them; manage their own affairs; appear in courts of justice, and even enact statutes and regulations for their own government, provided such statutes and regulations be not contrary to the laws of the political society of which they are members.



## Rights and privileges; corporate debts — Civ. Code, Arts. 434-438.

See R. S., § 684, notes and cross-references. Incapacity of corporation. R. C. C., arts. 440-443.

Art. 434. The right of succession also is inherent to the nature of corporations; so that as long as they exist they transmit to their successors their rights and their property. The right of electing in the manner prescribed by law, new members in the stead of those who have ceased to be members of the corporation, is a right impliedly attached to the constitution of every regularly established corporation.

See R. S., § 684, and cross-references.

Art. 435. Corporations are intellectual beings, different and distinct from all the persons who compose them.

See Const., art. 268, and cross-references. Regulations of corporation, binding on its members. R. C. C., art. 445. Incapacities of corporation. Id., arts. 440-443.

[Corporations are distinct from persons composing them, yet the latter have rights which they may protect in courts. *Knabe v. Ternot*, 16 La. Ann. 15.

Ownership of stock does not give stockholders any legal estate in corporate property. *Morgan v. R. R. Co.*, 1 Woods (C. S.), 15; *Sala v. New Orleans*, 2 id. 189.

The property of an extinct corporation belongs to the individual members. *Burke v. Wall*, 29 La. Ann. 39.

But not until all corporate debts are paid. *Cochran v. Dry Dock Co.*, 30 La. Ann. 1365; *Jackson v. Ludelling*, 21 Wall. (U. S.) 616.

Rights and duties of stockholders grow out of the contract employed in the subscription for stock. *Chase v. Bank*, 44 La. Ann. 69; s. c., 10 So. Rep. 379.

Corporators cannot sue singly for the corporation. What is due to the corporation is not due to the individuals composing it. *Ross v. Crockett*, 14 La. Ann. 511.]

Art. 436. The estate and rights of a corporation belong so completely to the body, that none of the individuals who compose it, can dispose of any part of them. In this respect the thing belonging to a body, is very different from a thing which is common to several individuals, as respects the share which every one has in the partnership which exists between them.

See R. S., § 684, subd. 4; R. C. C., arts. 437-439.

[A member of a corporation who is a creditor thereof has same right as any other creditor to sue it and attach its property. *Life Assn. v. Levy*, 33 La. Ann. 1203.

Dividends declared on corporate stock are payable on demand, and until demand and refusal, prescription does not begin to run against the person entitled. *Armant v. R. R. Co.*, 41 La. Ann. 1020; s. c., 7 So. Rep. 35.

Where expiring corporation is merged into a new one, and a provision inserted in new charter forfeiting dividends not claimed within three years from time when declared, is not binding upon old stockholders except from time when, expressly or by implication, they consent thereto by assuming the quality of stockholders in the new company. Id.

Stockholders have no right to appropriate any part of corporate assets to pay salaries due to

them as officers, or due them on any other account, until all other creditors have been paid. *Cochran v. Dry Dock Co.*, 30 La. Ann. 1365.

Stockholders of a corporation, in the name of which property has been bought on credit, cannot form a new corporation in which their interests are the same as in the old, and based on no new consideration; and by transferring the property to the new corporation escape liability to the vendor and creditor. *Hancock v. Holbrook*, 40 La. Ann. 53; s. c., 3 So. Rep. 351.]

Art. 437. According to the above rule, what is due to a corporation is not due to any of the individuals who compose it, and vice versa. A creditor of a corporation cannot therefore compel any of the members thereof to pay what may be due to him by the corporation; he can demand his payment of the corporation only, through their president, syndic or attorney in fact, and he can seize no other effects but such as belong to the corporation, provided the debt has been contracted by the corporation through their president, syndic, or attorney in fact; for if all the individuals who compose the corporation have signed the deed personally, every one of them may be compelled to make payment, either for his individual portion or in solidum, when it has been stipulated expressly that the debt was contracted in solidum.

See R. S., § 690.

[Corporate property is subject to corporate debts. And a court of equity will, in proper cases, subject property sold by the corporation and in the hands of the purchaser, to the payment of debts with which it is charged. *Leathers v. Janney*, 41 La. Ann. 1120; s. c., 6 So. Rep. 884.]

Art. 438. From the circumstance that a corporation is an intellectual being, it follows that they cannot personally transact all that they have a right legally to do, as has been above observed; wherefore it becomes necessary for every corporation to appoint some of their members to whom they may intrust the direction and care of their affairs, under the name of mayor, president, syndics, directors or others, according to the statutes and qualities of such corporation.

See R. S., § 684, subd. 5.

[The managers and officers of a corporation, where capital is contributed in shares, are trustees for its stockholders and its creditors; and they have no right to participate in any combination to divest it of its property and obtain such property for themselves at a sacrifice; nor to seek their own profit at expense of the company. Its stockholders or bondholders; and if necessary to sell corporate property, it is their duty to get for it the highest price obtainable. *Jackson v. Ludelling*, 21 Wall. (U. S.) 616.

Directors who, in pursuance of a resolution of the stockholders advertise a lease of the property, and reject all the sealed proposals received, may adopt another mode of contracting, and the courts will not interfere. *Ricau v. Baquie*, 20 La. Ann. 67.

Board of directors has undoubted right to sell property of the corporation to pay its debts. *Brewing Co. v. Flanner*, 44 La. Ann. 22; s. c., 10 So. Rep. 384.

But when sold to one of their own members it must appear that there was a necessity for the

sale, and that the property was bought in open market, at a fair price, and without any unfairness. *Id.* When the sale of the property was made necessary by the mismanagement of the board, one of the directors of said board will not be permitted to purchase it. *Id.*

An act reviving a charter does not continue in office officers elected under the charter during its first existence; their offices expired with that charter. *Rost v. St. Francis*, 3 N. S. 54.

Where person elected a director is ineligible, the person who has obtained the next highest number of votes is not elected; a new election must take place. *Jordy v. Hebrard*, 18 La. 455; *Lesseps v. Creditors*, 7 La. Ann. 624.

Individuals of a corporation cannot bind it by any act of theirs; much less by anything which they say. *Jacob v. Ursuline Nuns*, 2 Mart. 271; *Canal Bank v. Holland*, 5 La. Ann. 563; *Ross v. Crockett*, 14 *Id.* 811.

Directors of a bank may pledge its faith in execution of their trust. *State v. Bank*, 5 N. S. 344. But have no authority to reduce its capital. *Percy v. Millaudon*, 3 La. 574. They may sue to erase a subscription to stock. *Bank v. McDonough*, 5 La. 67. They are bound to enforce not only the express, but the implied provisions of the charter. *Id.* When not perfectly satisfied of the validity of titles to property offered for mortgage, in the exercise of a proper discretion, they should withhold their approval. *Walden v. Bank*, 6 La. 254.

Directors have discretionary power to declare dividends, and a very strong case must be presented to induce a court to interfere. *State v. Bank*, 6 La. 746.

Directors are not, properly speaking, officers of a bank, nor have they, individually, any power to control its management. *Bank v. Senecal*, 13 La. 527.]

Art. 439. The attorneys in fact or officers thus appointed by corporations for the direction and care of their affairs, have their respective duties pointed out by their nomination, and exercise them according to the general regulations and particular statutes of the corporation of which they are the heads. These attorneys or officers, by contracting, bind the corporations to which they belong in such things as do not exceed the limits of the administration which is intrusted to them; their act is supposed to be the act of the corporation. If the powers of such attorneys or officers have not been expressly determined, they are regulated in the same manner as those of other agents.

Relative to officers of bank. *Const.*, art. 269; see R. S., § 684, subd. 2, and cross-references. Corporation acts judicially through its agents. *C. P.*, art. 112.

[Officers of a corporation have no right to vote on the shares held by it. *Monsseaux v. Urquhart*, 19 La. Ann. 485.

To bind a corporation on a note drawn by a manager, it must be shown that latter had special authority to draw the note, or that the giving of it was necessary to effect the object for which he was appointed. *Culver v. Leovy*, 6 La. 530.

Where the corporation, for whose account the note is drawn, is not responsible, the individual members who signed and indorsed the notes are liable thereon jointly. *Same v. Same*, 19 La. Ann. 203.

Officers of a corporation have no right to use its property for their personal benefit. *Packet Co. v. Brown*, 36 La. Ann. 138.

A corporation which by its charter can only act through its board of directors cannot be bound to contracts by its president without the authorization of the board, unless it is in acts of simple

administration which, of necessity, should be done without that authorization. *Bright v. Cemetery Assn.*, 33 La. Ann. 58.

Agents of a corporation are entitled to reasonable compensation for their services. *Packet Co. v. Brown*, 36 La. Ann. 138. The unauthorized act of an agent of a corporation may be ratified by directors, which ratification is equal to a previous authority. *Id.*

The board of directors of a corporation have the general right to apply its property to the payment of its debts; and a majority of stockholders present, at a meeting regularly convened, with due notice for the purpose, have the right to ratify such action and dissolve the corporation. *Hancock v. Holbrook*, 40 La. Ann. 53; s. c., 3 So. Rep. 351.

Where more than ten years have elapsed since a deceased president and secretary rendered the last account of his administration of affairs of the corporation, the plea of prescription must prevail. *Ins. Co. v. Pike*, 34 La. Ann. 825.

Officers and directors are mandataries, and as such liable to the corporation for injuries resulting to it from their breaches of duty. They are likewise liable for wrongs which they may commit against third persons. They also, to a certain extent, are representatives of creditors, and may in some cases vindicate the rights of the latter. *Raymond v. Palmer*, 35 La. Ann. 276.

The president must act with candor and fair dealing for the interests of the corporation, and without any taint of selfish motive. *Hancock v. Holbrook*, 40 La. Ann. 53; s. c., 3 So. Rep. 351.

A bank held not liable for an unauthorized declaration by one of its officers. *Etting v. Bank*, 7 Rob. 459.

Board of directors which, in furtherance of the vote of the required majority, directs a total cessation of business and liquidation of corporate affairs, acts within the sphere of its lawful authority, and is not chargeable with any loss which the mismanagement may entail on the minority. *Trisconi v. Winship*, 43 La. Ann. 45; s. c., 9 So. Rep. 29.

Acts of directors, done within the lawful scope of their powers and authority, are not subject to judicial scrutiny. *Id.*

A corporation is not bound by unauthorized acts of its officers. *Const. Co. v. Police Jury*, 44 La. Ann. 563; s. c., 11 So. Rep. 236. As to authority of officer to bind corporation in management of ordinary business, see *Bank v. Plow Co.*, 45 La. Ann. 1214; s. c., 14 So. Rep. 139.

A want of officers by reason of either failure to elect or of death will not of itself work dissolution of the corporation. *In re Belton*, 47 La. Ann. 1614; s. c., 18 So. Rep. 642.

The connection of officer of corporation with it is one of personal trust and terminates with his death, and corporate property in his hands passes into control of corporate agencies and not to his administrators. *Id.*

Powers of corporate officers, being defined by charter and by-laws, they will, when acting within their sphere, represent the corporation, and bind it by their acts; but in other matters they can only represent, or act for it, when authorized by a resolution of directors. *Reed v. Powell*, 11 Rob. 98.

Where business of a corporation is such as to require it to be conducted through agents, notice to one, in a matter in which he acted within the scope of his employment, in the usual course of business, will bind the corporation. *Pontchartrain Co. v. Helme*, 2 La. Ann. 129.

Directors are bound to discharge their duties with ordinary care, and are liable for gross errors which a man of common prudence would not have committed; but if they learn any fact to arouse suspicion of fidelity of officers under their control, greater care is requisite. *Percy v. Millaudon*, 8 N. S. 74; 3 La. 568.

They cannot appropriate funds to the payment of counsel fees for defending them, when sued by stockholders. *Id.* The measure of their liability for illegal measures is the extent of injury sustained by the stockholder. *Id.*

They are not responsible in solido, unless expressly made so by charter. *Id.*

## Corporate rights; dissolution — Civ. Code, Arts. 440-447.

Payment of even a just claim by president without an order from directors, though on verbal direction of a majority of them, is irregular. *Building Co. v. Lawson*, 11 La. 36.]

Art. 440. Corporations being intellectual persons, they are subject to various kinds of incapacities, some of which are inherent to their nature, others are established by law.

See R. C. C., arts. 441-443.

Art. 441. A corporation cannot be administrator, guardian or testamentary executor, nor fulfill any other office of personal trust. A corporation cannot be imprisoned, for its existence being ideal, nobody can arrest or confine it.

Art. 442. In the same manner a corporation cannot bring an action for assault and battery or for other injuries of that nature; for a corporation can neither beat nor be beaten in its corporate capacity.

See R. S., § 684, subd. 2, and cross-references.

Art. 443. A corporation cannot commit the crime of treason, or any other crime or offense, in its corporate capacity, although its members may be guilty of those crimes in their individual and respective capacities.

See R. S., § 684, subd. 2, and cross-references.

Art. 444. In corporations the act of the majority is considered as the act of the whole.

Regulations of corporation obligatory upon members. R. C. C., art. 445. Meetings of corporation. R. S., § 741.

[In absence of any adverse provision in charter or statute, a majority of stockholders may determine that the business of the concern shall be stopped altogether and its affairs liquidated. *Trisceni v. Winship*, 43 La. Ann. 45; s. c., 9 So. Rep. 29.]

Assent of a majority of stockholders in relation to a corporate matter, not given in a stockholders' meeting, but by each one separately and at different times, is without force. *Peirce v. Building Co.*, 9 La. Ann. 404.

Courts cannot know or regard the wishes of majority of corporators, unless expressed in accordance with by-laws and charter. *German Cong. v. Pressler*, 14 La. Ann. 799.]

Art. 445. The statutes and regulations which corporations enact for their police and discipline, are obligatory upon all their respective members who are bound to obey them, provided such statutes contain nothing contrary to the laws, to public liberty, or to the interest of others.

See Const., art. 263. Power to make by-laws. R. S., § 864, subd. 6.

[By-laws are obligatory upon all members, if not contrary to law, public policy or the interest of others. *Congregation v. Pressler*, 17 La. Ann. 127.]

They have the force of law between the employees; the company may exercise its rights and discharge its employees. *Hunter v. Ins. Co.*, 26 La. Ann. 13.

Corporations may enact by-laws for their government. *Williams v. Masons*, 38 La. Ann. 620.

But to be valid they must be consistent with the general laws, and cannot affect rights of third parties without their consent. *Gordon v.* where a corporation is empowered to make by-laws in certain cases and for certain purposes, its power is limited to the cases and objects specified. *New Orleans v. Philippi*, 9 La. Ann. 44.

By-laws must be reasonable and consistent with general laws of the land; and whether they are so is a question for the court. *State v. Bank*, 5 N. S. 344.

Stockholders may be bound by provisions beyond those actually found in the charter, if it authorize directors to make by-laws, not contrary to law, for the general administration of corporate affairs. *Bank v. Guice*, 2 La. Ann. 249.

A by-law, where charter is silent on the subject, cannot subject a stockholder to a forfeiture of stock for non-payment of an installment. *Lesseps v. Architects' Co.*, 4 La. Ann. 316.]

Art. 446. Corporations unauthorized by law or by an act of the legislature, enjoy no public character, and cannot appear in a court of justice, but in the individual name of all the members who compose it, and not as a political body; although these corporations may acquire and possess estates, and have common interests as well as other private societies.

See R. S., § 684, subd. 2, and cross-references.

## CHAPTER III.

## Of the Dissolution of Corporations.

Art. 447. Corporation may be dissolved, how.

Art. 447. A corporation legally established may be dissolved:

1. By an act of the legislature, if they deem it necessary or convenient to the public interest; provided that when the act of incorporation imports a contract, on the faith of which individuals have advanced money or engaged their property, it cannot be repealed without providing for the reimbursement of the advances made, or making full indemnity to such individuals;

2. By the forfeiture of their charter, when the corporation abuses its privileges, or refuses to accomplish the conditions on which such privileges were granted, in which case the corporation becomes extinct by the effect of the violation of the conditions of the act of incorporation.

See Const., art. 262, and cross-references. Charter forfeited by formation of a trust. Act of 1892, at p. 28.

[A corporation may be dissolved, first, by an act of the legislature on certain conditions; second, by a forfeiture of its charter, judicially ascertained at the suit of the State. *Curien v. Santini*, 16 La. Ann. 27; *Burke v. Wall*, 29 id. 39.]

A corporation legally established may be dissolved by an act of the legislature, if they deem it necessary for the public interests. *Williams v. Masons*, 38 La. Ann. 620.

As a general rule the question as to the forfeiture or dissolution of charters and acts of incorporation is one which concerns the public order, and the corporation is presumed to exist for all purposes of justice until the forfeiture is declared by the judgment of a competent court in some proceeding to which the State is a party. *Id.*]

## CODE OF PRACTICE OF LOUISIANA — 1867.

## Part I. Of Civil Actions.

## TITLE I. OF ACTIONS IN GENERAL.

## CHAPTER V.

## What Persons are Entitled to Bring Actions.

Art. 112. Bodies corporate must sue in corporate name through representatives.

Art. 112. Bodies corporate, and chartered institutions, act judicially through their proper representatives, under the name or title given to them in their act of incorporation.

See R. S., § 684, subd. 2, and cross-references.

## CHAPTER VI.

## Against Whom Actions May be Brought.

Art. 119. Corporations must be sued by corporate name.

Art. 119. Suits against corporations, corporate bodies or chartered companies, must be brought against them under their legal titles.

See R. S., § 684, subd. 2, and cross-references.

## Part II. Rules to be Observed in Civil Actions.

## TITLE I. PROCEEDINGS BEFORE COURTS OF ORIGINAL JURISDICTION.

## CHAPTER II.

## Of the Ordinary Proceedings.

Art. 191. Petition and citation how served upon corporation.

198. Same.

(Statute.) In case of trespass, corporation to be sued where.

202. Service upon banks and other institutions.

Art. 191. \* \* \* If the suit be brought against the members of a corporation, \* \* \* the petition and citation must be served, in the manner hereafter provided, in the following articles.

See R. S., § 684, subd. 2, and cross-references. Charter to designate officer on whom citation to be served. R. S., § 685. Foreign corporation to have agent for process. Const., art. 264.

Art. 198. When a suit is brought against a corporation, \* \* \* the service must be made as follows: \* \* \*

In suits against banking establishments, on their president in person, or at the house where the bank is kept, by delivery to the

teller, or in his absence, to some other officer of the establishment; \* \* \*

See Const., art. 264, and cross-references.

No. 174. Stat. 25th April, 1853.—§ 2. In all cases where any corporation shall commit such trespass, or do anything for which an action lies, it shall be liable to be sued in the parish where such damage is done or trespass committed.

Art. 202. The same formalities, which are prescribed in the preceding articles, must be observed by the sheriff, in serving citation at the office of chartered banks, or other public institutions, or at the counting-house of commercial establishments, or on board of ships or vessels.

See R. S., § 684, subd. 2, and cross-references.

## CHAPTER X.

## Of Orders Which Courts May Render in Certain Cases.

## Sec. 4. OF THE MANDATE TO PREVENT AN USURPATION OF OFFICE (WRIT OF QUO WARRANTO).

Art. 867. Mandate defined.

868. Only issued in relation to officers in corporation.

869. Person to whom directed must answer in writing.

870. Penalty for not answering within time.

871. Judgment by the court.

873. When courts shall not issue such mandates.

Art. 867. This is an order rendered in the name of the State, by a competent court, and directed to a person who claims or usurps an office, in a corporation, inquiring by what authority he claims or holds such office.

See R. S., § 684, subd. 2, and cross-references. Not to issue, when. C. P., art. 873.

[Though, under our legislation, any stockholder has a right to inquire, by a quo warranto, into election of those who assume to administer the corporation, yet, where wrong complained of was the result of his own negligence or misconduct, or he has acquiesced or concurred in it, he will not be listened to. *Wiltz v. Peters*, 4 La. Ann. 339.

Otherwise, if some objection has come to his knowledge since the election. These principles are certainly applicable to private corporations. Election of directors will not be set aside because legal votes were received without proper evidence. *Conant v. Millaudon*, 5 La. Ann. 542.

Persons holding stock in trust may vote for directors. *Id.* The mere assertion that votes may be illegal is not sufficient to put officers elected on proof of their legality. Fraud upon a charter is not to be presumed. *Id.*]

Art. 868. This mandate is only issued for the decision of disputes between parties, in

Quo warranto; trespass — Code of Pr., Arts. 869-873, 1069.

relation to the offices in corporations as when a person usurps the character of mayor of a city, and such like \* \* \*

Art. 869. A mandate to prevent the usurpation of an office in a city or other corporation, may be obtained by any person applying for it, and the party to whom it is directed must make his answer in writing, within the time allowed by the court, and state the authority under which he exercises his office.

See R. S., § 684, subd. 5.

Art. 870. If the person to whom the order is directed does not answer within the time allowed, the court shall declare him not qualified to fill the place of which he performs the duties, shall forbid him to perform them any longer, shall condemn him to pay the costs, and shall direct the corporation to proceed to a new appointment.

Art. 871. But if the person to whom the order is directed, answer within the time allowed, the court shall pronounce upon the answer, in a summary manner, and after hearing the parties, if he thinks that the person to whom the mandate was directed, has usurped the office which he holds, or that he continues in it unlawfully, it shall render judgment against him, in the manner provided in the preceding article.

Art. 873. When the legislature has granted to a corporation the right to determine the

validity of the elections of its members or officers, courts of justice shall not issue mandates for the purpose of inquiring into that fact.

See R. S., § 684, subd. 5.

#### TITLE IV. OF PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

##### CHAPTER I.

##### Of Their Jurisdiction in Civil Matters.

Art. 1069. Actions for trespass against corporations, where brought.

Art. 1069. (As amended June 15, 1888.) In civil cases within their competence justices of the peace can only cite before them such persons as are domiciliated or residing within the limits of their jurisdiction or strangers who may chance to be there; and in all cases where any corporation shall commit trespass or do anything for which an action of damages lies, it shall be liable to be sued in the ward where such damage is done or trespass committed. In this case the term strangers applies to such as have no domicile or fixed place of residence in the State. Provided further, That courts may issue their commission to any magistrate of the parish, wherein a witness shall reside, to examine such witness and receive his deposition.

See R. S., § 684, subd. 2. and cross-references.

### LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1870.

1. To consolidate the business of manufacturing corporations.
2. To provide for increase of capital stock, and to carry into effect article 267 of the Constitution.
3. To provide for formation of certain corporations, and limiting their capital.
4. Same.
5. Revenue Act.
6. To provide summary remedy against corporations to compel compliance with certain contracts with municipal corporations.
7. To carry into effect article 264 of the Constitution.
8. To prevent trusts and combinations.
9. To provide for keeping record of charters.
10. To authorize certain corporations to borrow money and issue bonds.
11. To provide for increase and decrease of capital stock.
12. To regulate appointment of receivers for corporations.

#### Act 1.

AN ACT to authorize the consolidation of the business or manufacturing corporations or companies.

Section 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That any two business and manufacturing corporations or companies now existing under

general or special law, whose objects and business are in general of the same nature, may amalgamate, unite and consolidate said corporations or companies and form one consolidated company, holding and enjoying all the rights, privileges, powers, franchises and property belonging to each, and under such corporate name as they may adopt or agree upon. Such consolidation shall be made by agreement in writing by or under the authority of the board of directors, and the assets of the owners of at least three-fifths of the capital stock of each of said corporations or companies, and a certificate of the fact of such consolidation, with the name of the consolidated company, shall be filed and recorded in the office of the secretary of State; Provided, No such consolidation shall in any manner affect or impair the right of any creditors or either of said companies. In the agreement of consolidation the number of directors of the consolidated company shall be specified, and the capital stock may be any amount agreed upon by the companies or corporations, and set forth in the articles of consolidation.

§ 2. Be it further enacted, etc., That all laws or parts of laws conflicting in any man-

Formation of corporations; taxation — Acts, July 5, 1882; June 29, July 12, 1888.

ner with the provisions of this act be, and the same are hereby repealed, and that this act shall take effect from and after its passage.

(Approved December 12, 1874.)

See Const., art. 274.

#### Act 2.

Repealed by Act 11.

#### Act 3.

AN ACT to provide for the formation of corporations for certain purposes, and limiting the capital of the same.\*

Be it enacted by the general assembly of the State of Louisiana, That it shall be lawful for any number of persons not less than three, upon complying with the provisions and subject to the restrictions of the laws of this State governing corporations in general, to form themselves into and constitute a corporation, for the purpose of carrying on any mechanical, mining or manufacturing business, except that of distilling or manufacturing intoxicating liquors, with a capital not less than five thousand nor more than one million dollars.

(Approved, July 5, 1882.)

See Const., art. 275, and cross-references.

#### Act 4.

AN ACT to provide for the formation of corporations for certain purposes, limiting the capital of the same, and the liability of the stockholders thereof.

Section 1. Be it enacted by the general assembly of the State of Louisiana, That it shall be lawful for any number of persons, not less than three, upon complying with the provisions of the laws of this State governing corporations in general, to form themselves into and constitute a corporation for the purpose of carrying on any lawful business or enterprise, not otherwise specially provided for, and not inconsistent with the Constitution and laws of this State; provided that no such corporation shall engage in stock-jobbing business of any kind; the corporations herein provided for to have a capital stock of not less than five thousand dollars.

§ 2. The word "limited" shall be the last word of the name of every corporation formed under the provisions of this act; and every such corporation shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the corporation is carried on, in a conspicuous position, in letters easily legible, and shall have its full

name mentioned in legible characters in all notices, advertisements and other official publications of such corporations, and in all bills of exchange, promissory notes, checks, orders for money, bills of lading, invoices, receipts, letters, and other writings used in the transaction of the business of the corporations; Provided, That the omission of the word "limited," in the use of the name of the corporation shall render each and every person participant in such omissions, or knowingly acquiescing therein, liable for any indebtedness, damage or liability arising therefrom.

§ 3. Be it further enacted, etc., That no stockholder of such corporations shall ever be held liable or responsible for the contracts or faults of such corporation in any further sum than the unpaid balance due to the company on the shares owned by him; nor shall any mere informality in organization have the effect of rendering a charter null or of exposing a stockholder to any liability beyond the amount of his stock.

§ 4. Be it further enacted, etc., That all laws or parts of laws in conflict or inconsistent with the provisions of this act, be and the same are hereby repealed.

(Approved June 29, 1888.)

See Const., art. 275, and cross-references.

#### Act 5.

AN ACT to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted by the Constitution from taxation, and by prescribing the methods of assessing and collecting the same, and of enforcing payment thereof.

Section 1. Be it enacted by the general assembly of the State of Louisiana, That for the calendar year, A. D., one thousand eight hundred and eighty-eight (1888), and for each succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six mills on the dollar of the assessed valuation of all property situated within the State of Louisiana, except such as is expressly exempted from taxation by the Constitution; and the term property as herein used, means and includes all real estate, with the buildings and all other improvements thereon or thereto attached, \* \* \* all charters and franchises, \* \* \* all personal property, \* \* \* all shares of stock in all banking, insurance, manufacturing, and all other incorporated or non-incorporated companies chartered under the laws of Louisiana, or under the laws of any other State than Louisiana; and all other articles and things whatever possessing any money value. This enumeration shall not be construed so as to exempt from taxation any property or values not enumerated herein; Provided, that no articles or things

\*Is this act repealed by the next following act?

Contracts with municipalities; foreign corporations — Acts, July 12, 1888; July 10, 1890.

hereinabove enumerated shall be assessed more than once the same year. \* \* \*

§ 90. Be it further enacted, etc., That the following rules for the taxation of persons and property are hereby established, to-wit:  
\* \* \*

2. The phrase "personal property." or "movable property." shall be held to mean and include all things other than real estate, which have any pecuniary value, and moneys, credits, investments in bonds, stocks, shares in joint-stock companies or otherwise. \* \* \*

5. The word "person" or "persons," "taxpayer" or "taxpayers," shall be held to include firms, companies, associations and corporations. \* \* \*

(Approved July 12, 1888.)

See Const., art. 228, and cross-references.

[The assessment of shares for the purpose of taxation of the shareholder is not subject to deduction of bonds exempt from taxation. *Ins. Co. v. Assessors*, 42 La. Ann. 1131; s. c., 8 So. Rep. 481.]

A corporation in matters of taxation is distinct from the shareholder. The statute expressly declares that it is not a tax on the capital of the corporation, but it is a tax on the shares. *Id.*

Property exempt in taxing a corporation per se is not exempt in assessing the shareholders; bonds exempt from taxation are not subject to taxation when the property of the corporation is taxed. The eventual interest of the shareholder in these bonds does not give him any right to exemption on the assessed value of his shares. *Id.*

Above act is not in conflict with provision of Constitution, which requires taxes to be paid equal and uniform. *Tax Collector v. Ins. Co.*, 42 La. Ann. 1172; s. c., 8 So. Rep. 618.

Nor with the United States Constitution. *Id.* Shares of stock, evidenced by certificate, are incorporeal rights in the funds and assets of the corporation, and must be seized, whether by taking possession of the shares themselves, or by seizing the interest of the shareholder in the assets of the corporation, by giving notice to the proper officer thereof. *Id.*

The assessment of the franchise measured chiefly by the earning capacity of the corporation is a proper assessment. *R. R. Co. v. City*, 44 La. Ann. 1057; s. c., 11 So. Rep. 681.]

### Act 6.

AN ACT providing a summary remedy against corporations to compel a compliance with certain obligations and contracts with municipal corporations, and providing ways and means to enforce said remedy.

Section 1. Be it enacted by the general assembly of the State of Louisiana, That in all cases where any corporation has heretofore contracted with, or may hereafter contract with, or shall be otherwise legally bound to any parish or municipal corporation in this State, with reference to the paving, grading, repairing, reconstructing or care of any street, highway, bridge, culvert, levee, canal, ditch or crossing, and shall fail or neglect to perform said contract

or obligation, the said parish or municipal corporation, or any officer thereof, or any five taxpayers thereof, shall have the right to proceed by a writ of mandamus to compel the performance of said contract or obligation, or any part thereof, which writ of mandamus shall be made returnable in five days, shall be tried by preference over all other cases, without a jury in vacation, as well as in term time, and in case of appeal shall be tried by preference in the appellate court.

§ 2. Be it further enacted, etc., That in case any corporation shall fail or neglect to comply satisfactorily with any judgment against it in such a proceeding within the time therein fixed (which time shall be fixed by the court at such period within which the work can be reasonably done), it shall be the duty of the court, on contradictory motion and proof taken in the same case, to issue a writ of distringas against said company, and to order the sheriff to do the work required to be done, and to apply the revenues and property of said company to defray the expenses incurred in executing the judgment of the court.

§ 3. Be it further enacted, That all laws and parts of laws contrary to the provisions of this act be and the same are hereby repealed.

(Approved July 12, 1888.)

See R. S., § 684, subd. 2.

### Act 7.

AN ACT to carry into effect article 236 of the Constitution of 1879.

Section 1. Be it enacted by the general assembly of the State of Louisiana, That it shall be the duty of all corporations, domiciled out of the State, doing business in the State, excepting mercantile corporations, to file in the office of the secretary of State a declaration of the place or locality of its domicile, together with the name of its agent or officer in the State representing said corporation upon whom service of process can be made.

§ 2. Be it further enacted, etc., Whenever any such corporation shall do any business of any nature whatsoever in this State, without having complied with the requirements of section one of this act, it may be sued upon any cause of action in the parish, where the right or cause of action arose, and service of process may be made upon the person or persons, firm or company, acting or transacting such business for such corporation, and each person or persons, company or firm shall be deemed the agent of said corporation upon whom service can be made.

(Approved July 10, 1890.)

See Const., art. 264.

**Act 8.**

AN ACT to prevent trusts or combinations intended to restrain trade or control the market value of merchandise, produce of commodities and to provide for penalties and punishment of persons, corporations, firms and associations of persons connected with them, and to promote free competition in the State of Louisiana.

Section 1. Be it enacted by the general assembly of the State of Louisiana, That after the passage of this act it shall be unlawful for any individual, firm, company, corporation or association to enter into, continue or maintain any combination, agreement or arrangement of any kind, expressed or implied, with any other individual, firm, company, association or corporation for any of the following purposes: First, To create or carry out restrictions in trade. Second, To limit or reduce the production, or increase or reduce the price of merchandise, produce or commodities. Third, To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities. Fourth, To fix at any standard or figure, whereby its price shall be in any manner controlled or established, any article of merchandise, produce, commodity or commerce intended for consumption in this State. Fifth, To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves, or others, in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

§ 2. Be it further enacted, etc., That any corporation holding a charter under the laws of the State of Louisiana, which shall be convicted of a violation of the provisions of this act shall thereby forfeit its rights and franchises, and its corporate existence shall cease and determine, and it shall be the duty of the attorney-general of his own motion and without leave or orders of any court or judge, to institute an action in the name of the State of Louisiana for the forfeiture of such rights and franchises and the dissolution of such corporate existence,

§ 3. Be it further enacted, etc., That every foreign corporation, or any corporation organized under or pursuant to the laws of any State, who shall be convicted of a violation of the provisions of this act is hereby denied the right and prohibited from doing any business within this State, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proceedings in the name of the State of Louisiana.

§ 4. Be it further enacted, etc., That any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may be or may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director or agent, knowingly carry out any of the stipulations, purposes, prices, rates, or orders thereunder or in pursuance thereof, shall be punished by fine not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the penitentiary not less than six months nor more than one year or by either such fine and imprisonment in the discretion of the court. It shall be the duty of the district attorneys in their respective jurisdictions and the attorney-general to enforce this provision and any district attorney of any parish securing a conviction under this provision shall be entitled to such fee or salary as by law he is allowed for such prosecution.

§ 5. Be it further enacted, etc., That in any indictment for any offense named in this act it is sufficient to state the purposes or effects of the trust or combination and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was created, provided, that no contract or agreement or arrangement which does not include, or which cannot be held to include a stipulation between the parties to share in the profits of any such contract, agreement or arrangement, or which contract, agreement or arrangement does not provide for or does not contemplate a profit or pool to be divided between the parties to such contract, agreement or arrangement, shall be held or construed to be in violation of the provisions of this act.

§ 6. Be it further enacted, etc., That in prosecutions under this act, it shall not be necessary to prove who constitute all the members belonging to the trust or combination.

§ 7. Be it further enacted, etc., That any contract or agreement in violation of the provisions of this act, shall be absolutely void.

§ 8. Be it further enacted, etc., That the provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser; nor be so construed as to affect any combination



## Filing of charters, etc.; bond issues — Acts, July 8, 1898.

or confederation of laborers for the purpose of procuring an increase of their wages or redress of grievances.

§ 9. Be it further enacted, etc., That this act shall take effect from and after its passage and that all laws and parts of laws conflicting with same are hereby repealed.

(Approved July 7, 1892.)

See Const., art. 275; R. S., § 731. Corporation, how dissolved. R. C. C., art. 447.

## Act 9.

AN ACT to provide for recording and keeping a record in the office of the secretary of State of all charters of corporations, proofs of publication thereof, amendments thereto, and proceedings relative to the consolidation, dissolution and liquidation of corporations; to provide for the use and effect as evidence of extract and certificates from such record.

Section 1. Be it enacted by the general assembly of the State of Louisiana, That all corporations except those organized for literary, scientific, religious, educational or charitable purposes, hereafter doing business in the State of Louisiana shall file with the secretary of State first: A duly certified copy of their charters taken either from the record of the notary before whom the act of incorporation was passed, or from the record thereof in the office of the recorder in whose office said charter shall have been recorded; to which copy shall be affixed the certificate of such recorder attesting recordation of the acts in his office and giving book and folio of such record or a published copy duly certified by one of said officers. Second: A copy of one issue of the newspaper wherein the said charter shall have been published when such publication is required by law, together with the affidavit of the publisher, making oath to the fact that said charter was duly published in his paper as required by law. Third: A certified copy of any and all amendments to such charters, taken either from the record thereof in the office of the recorder where the same shall have been recorded as required by law, or from the records of the notary public before whom the act of incorporation was passed, to which copies shall be attached the certificate of such recorder attesting the fact that the same has been recorded in his office and giving the book and folio of such record. Fourth: A copy of the minutes of any and all meetings of stockholders or directors containing all proceedings of such stockholders and directors in reference to such amendment of charter, duly attested by the secretary of such corporation, whose signature to such attestation shall be duly acknowledged. Fifth: Any and all agreements for the consolidation of corporations together with copies from the minutes of any meetings of stockholders or directors au-

thorizing or pertaining to the consolidation, dissolution or liquidation of any corporation, the signatures to such agreements to be duly acknowledged, and the copies of such minutes to be duly attested by the secretary of such corporation, whose signature to such attestation shall be duly acknowledged.

§ 2. Be it further enacted, etc., That the secretary of State shall keep books in which to transcribe and record all of the documents and writings by the first section of this act required to be filed in his office (other than the newspapers therein described) which books shall be numbered consecutively and to which books he shall keep proper indices.

§ 3. Be it further enacted, etc., That the secretary of State, shall keep on file in his office the newspapers required to be filed with him, as provided in section one of this act, and he shall make entry in the books provided by section two of this act attesting the fact that such newspapers have been filed with him and that such charter has been duly published.

§ 4. Be it further enacted, etc., That extracts from the books provided by section two of this act, duly attested by the secretary of State, shall be admissible in evidence in all courts and shall constitute prima facie proof of all facts stated in such extracts.

§ 5. Be it further enacted, etc., That this act shall take effect from and after its passage.

(Approved July 8, 1898.)

## Act 10.

AN ACT to authorize certain corporations for works of public improvement to borrow money and issue bonds or other obligations therefor; to prescribe the manner of securing the same, and of disposing thereof, and to repeal all laws conflicting herewith.

Section 1. Be it enacted by the general assembly of the State of Louisiana, That any railroad, plank-road, turnpike, canal, elevator, warehouse, drainage, sewerage, sub-way, land reclamation, levee building, water-works, electric light, gas light, electric power, water power, telegraph, telephone or mining corporation, established under the laws of this State, whether by special or general act, or under the laws of any other State, and owning property in this State, may borrow from time to time such sums of money as may be required for its corporate purposes, and for this purpose may issue bonds or other obligations, secured by mortgage or pledge or both of the franchises, and all property, real or personal, present and future incomes, revenues, contributions and receipts of said companies, and payable on such terms, and at such times and places as the said corporation, through its board of directors, or other managing body may direct or designate; and said corporation shall

Increase or decrease of capital; receivers — Acts, July 14, 1898.

have power to sell, pledge, or otherwise dispose of such bonds or other obligations on such terms as it may direct or deem expedient.

§ 2. Be it further enacted, etc., That any and all laws and parts of laws in conflict with this act, be and the same are hereby repealed.

(Approved July 8, 1898.)

#### Act 11.

AN ACT to provide the manner in which corporations may increase or decrease their capital stock, and to carry into effect Article No. 267 of the Constitution of 1898.

Section 1. Be it enacted by the general assembly of the State of Louisiana, That any corporation now existing, which was created under the laws of this State, either by special act or under the general law, and any corporation that may be created under the laws of this State, may increase or decrease its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation.

§ 2. Be it further enacted, etc., That whenever any corporation shall desire to increase or decrease its stock, the directors thereof shall publish a notice for thirty days preceding the time fixed for such meeting, that a meeting of the stockholders will be held at the office of the corporation for the purpose of deciding upon such an increase or decrease and shall also deposit a written or printed copy of such notice in the post-office, prepaid, addressed to each stockholder at his usual place of residence, at least forty days before the date fixed for such meeting.

§ 3. Be it further enacted, etc., That the time and place of meeting, fixed and appointed as provided for in section two (2) of this act, stockholders being present, either in person or by proxy, holding a large amount not less than two-thirds in value of the stock, the meeting shall be organized by the election of one of the stockholders as chairman thereof and another stockholder as secretary, a vote shall then be taken upon the proposed increase or decrease of the stock of the corporation. If, on canvassing the votes, it shall appear that persons holding or representing not less than two-thirds of the stock of the corporation, have voted in favor of the proposed increase or decrease of stock, a certificate of the proceedings shall be made, showing a compliance with the provisions of this act; the amount of capital stock of the corporation at the time the said vote was taken and the number of holders thereof, the amount and the number of shares to which it was proposed and agreed to be increased or decreased, the amount and number of shares whose holders have voted against said change and the whole amount of the

debts and liabilities of said corporation; the said certificate shall be signed by the chairman and secretary of said meeting of stockholders, and shall be verified by their affidavits, and shall be filed in the office of the secretary of State, and when said certificate is so filed, the capital stock of said corporation shall be increased or decreased as herein set forth.

§ 4. Be it further enacted, etc., That all laws and parts of laws in conflict herewith are hereby repealed, and that this act shall take effect from and after its passage.

(Approved July 14, 1898.)

See Const., art. 267.

[Stock cannot be increased except by compliance with requirements of above act, and until those requirements have been fulfilled the increased stock is not in existence. *Lincoln v. Express Co.*, 45 La. Ann. 729; s. c. 12 So. Rep. 937.]

A sale by a corporation of such non-existent stock, and delivery of a certificate thereof to an innocent third person who pays cash for it, entitles vendee to recovery of price. *Id.*

#### Act 12.

AN ACT to authorize and regulate the practice of appointing receivers of corporations under article 109 and 133 of the Constitution.

Section 1. Be it enacted by the general assembly of the State of Louisiana, That the several district courts of this State, and the Civil District Court of the parish of Orleans, are empowered to appoint receivers to take charge of the property and business of corporations domiciled in this State, and of the property of foreign corporations actually located herein, in the cases and under the conditions following, to-wit:

1. At the instance of any stockholder, when the corporation has been legally dissolved and the appointment of a receiver to liquidate the affairs of the corporation has been requested by a majority in amount of the stockholders, provided the right of stockholders to liquidate the affairs of the corporation in accordance with the charter shall not be affected thereby.

2. At the instance of any stockholder or creditor, when the directors or other officers of the corporation are jeopardizing the rights of stockholders or creditors by grossly mismanaging the business or by committing acts ultra vires, or by wasting, misusing, or misapplying the property or funds of a corporation.

3. At the instance of any stockholder or creditor when the property of a corporation is abandoned, or when by failure of the stockholders to elect, or the neglect or refusal of the officers to serve, there is no one authorized to take charge of or conduct its affairs.

4. At the instance of any creditor having a final and executory judgment, suing in behalf of himself and for the benefit of any

Receivers, appointment, powers and duties — Act, July 14, 1898.

other creditors who may join therein, when the corporation is insolvent or when execution has issued on such judgment and has been returned nulla bona.

5. At the instance of any mortgage or privileged creditor when the property on which the mortgage or privilege rests is inadequate to satisfy such mortgage or privilege, and the directors or officers are appropriating the funds or property of the corporation to themselves or to the stockholders, or are wasting, misapplying or misusing the same to the injury of such mortgage or privilege creditor.

6. At the instance of any creditor when the property of the corporation has been seized under judicial process by fraud or collusion between the corporation, its officers, or stockholders and any creditor.

7. At the instance of any stockholder or creditor when the corporation has been adjudged not organized according to law, or pursuing any business calling, or avocation contrary to law.

8. At the instance of a creditor when the board of directors of the corporation shall have declared by resolution that the corporation is unable to meet its obligations as they mature, and that a receiver is necessary to preserve and administer its assets for the benefit of all concerned.

9. At the instance of a mortgage or privilege creditor who has instituted proceedings to foreclose his mortgage or privilege, and the property upon which such mortgage or privilege rests is of such a character that its administration pending a sale is necessary or proper to fully preserve same and protect the rights of such creditor.

10. At the instance of any creditor residing in this State, of the property actually situated in this State of a corporation domiciled out of this State for any of the causes hereinabove mentioned.

11. At the instance of any stockholder when a majority of the stockholders are violating the charter rights of the minority and putting their interests in imminent danger.

§ 2. Be it further enacted, etc.. The application for appointment of a receiver shall be made by petition addressed to the district court of the domicile of the corporation, and if a foreign corporation, at its designated domicile if it has one, or if it has not designated a domicile then where any of its property is situated. Such petition shall be verified by the affidavit of the plaintiff or plaintiffs, or any of them, or by his or their attorney-at-law, or in fact, in case such plaintiff or plaintiffs are absent from the State, the court shall cause a copy of the petition together with an order to be served on the corporation requiring it to show cause on a day fixed (not less than ten days from the date of such order, unless circumstances shown require in the judgment of the court a shorter delay), and such ap-

plication shall be heard and determined by the court in a summary manner in term time or vacation, and without the intervention of a jury.

§ 3. Be it further enacted, etc.. Pending the hearing and determination of such application the court may, in its discretion, and on the plaintiff giving bond in a sum to be fixed by the court, restrain by injunction the corporation, its officers, stockholders and agents from disposing of its property or changing the status of its affairs to the injury of the plaintiff; or staying proceedings by other persons against its property.

§ 4. Be it further enacted, etc.. Any person or persons who by affidavit appear to be interested, on giving bond in a sum to be fixed by the court, may appeal in the face of the record from any order appointing, or refusing to appoint a receiver, granting, or refusing to grant an injunction as aforesaid: such an appeal when perfected shall have the effect of suspending the functions of such receiver, except to perform such administrative acts as may be necessary for the preservation of the property; Provided That such appeal must be taken and perfected within ten days from the entry of the order appointing or refusing to appoint a receiver, or granting or refusing to grant an injunction. Such appeal shall be returnable in ten days from the date of such order, and shall be tried by preference in the appellate court. Any interested party may apply within thirty days after the entry of the order of appointment of a receiver to vacate same on legal or just grounds, and may appeal from an adverse judgment, but such appeal shall not suspend the functions of said receiver in any way. The value of the property confided to the receiver shall determine the jurisdiction of the appellate court.

§ 5. Be it further enacted, etc.. In the order appointing such receiver the court may, in its discretion, confer on the receiver such powers of administration as it may deem best for the interest of all parties, and from time to time restrict or enlarge such powers, and may authorize any receiver of a corporation, public in its character, in order to carry on the business of the corporation, to borrow or obtain money on certificates of indebtedness to be taxed as costs of court. The sum so obtained shall bear a first privilege on the property and income of the corporation.

§ 6. Be it further enacted, etc.. The receiver so appointed shall give such bond for the faithful performance of his duties as the court may fix; and shall hold, administer, manage and dispose of the property and income of such corporation in such manner as the court may decide to be for the interest of all parties. Such receiver shall receive the same compensation as syndics of insolvents, whenever the power is not conferred upon him to conduct the business of the corporation as a going concern; other-

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wise his compensation shall be fixed at such reasonable sum as the nature of the case justifies. In the event that more than one receiver be appointed, the compensation allowed shall not be increased but shall be divided as the court may determine.

§ 7. Be it further enacted, etc., The court may appoint such experts or examiners as may be necessary, to whom may be referred for examination and report such matters of accounts and claims and matters of similar nature as the court may determine.

§ 8. Be it further enacted, etc., The clerk of the district court shall keep a book, to be known as the receivership order book, among the records of office, and shall immediately enter notice therein of the filing of every petition, motion, rule or application made in behalf of any person, (giving title and number of cause, date of filing, name of petitioner and the object of the petition, etc.), and shall note on said book the time of filing petition, etc., and shall enter at large therein all orders or decrees made by the court in relation to any receivership. No order shall be granted by the court until ten days after entry of such notice in the order book, except an order to show cause, or when circumstances in the opinion of the court require otherwise, and same is so stated in the order or decree.

§ 9. Be it further enacted, etc., Receivers

shall, when vested with powers of administration, file quarterly statements of their gestion, unless oftener required, showing accurately the condition of the business conducted by them; and when not so vested, they shall file annual accounts. Notice of the filing of such statements or accounts shall be entered in the order book. No statement shall be approved by the court until ten days after entry of such notice, and no account shall be homologated until after publication as provided in case of administrators of successions or syndics of insolvents.

§ 10. Be it further enacted, etc., Where the court has appointed a receiver and it is made to appear that there is no reasonable ground to believe that the property of the corporation can be so administered as to pay its debts, and the possession thereof restored to the corporation, the court may on application of any party at interest, after ten days' notice of such application on the order book, if there be no opposition, or after hearing of same be opposed, order the sale of the property and the distribution of its assets in accordance with the rights of the parties in interest.

§ 11. Be it enacted, etc., All laws or parts of laws in conflict herewith are hereby repealed.

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MAINE.

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# MAINE.

## CONSTITUTION OF MAINE—1819.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Declaration of Rights.

- Sec. 11. Laws impairing the obligation of contracts prohibited.  
21. Private property not to be taken without just compensation.

#### ARTICLE IV.

##### Legislative.

- Sec. 14. Corporations, when practicable, to be formed under general laws.

#### ARTICLE I.

##### Declaration of Rights.

- § 11. The legislature shall pass no \* \* \* law impairing the obligation of contracts, \* \* \*

Charters may be repealed. Ch. 46, § 23.

[Private corporations exist by legislative grants, conferring rights and powers for special purposes. *Yarmouth v. North Yarmouth*, 34 Me. 411. Such grants constitute legal contracts, and the legislature cannot impair the obligation of them. *Id.* The existence, powers and capacities of corporations created by the legislature must depend upon the contract by which they were created. *Penobscot Boom v. Lamson*, 16 Me. 224.

Although charter of a corporation is an inviolable contract between it and the State, corporations, like persons, are subject to remedial legislation, and amenable to general laws. *Coffin v. Rich*, 45 Me. 507.

There being no privity of contract between the corporators of a corporation and the individual members, they are personally liable only by express provision of charter; the repeal of such a statute does not impair the obligation of any contract. *Coffin v. Rich*, 45 Me. 507; contra, *Hawthorne v. Calef*, 2 Wall. 10.

Charters are contracts with the State, the obligation of which cannot be impaired. *Water Co. v. Water Co.*, 80 Me. 544; s. c., 15 Atl. Rep. 785. When rights have become vested under them authority of legislature to destroy those rights is at an end, unless power of alteration or repeal is reserved. *Id.*

But there may be such legislation as will injuriously affect interests of corporation, and yet impair no obligation of contract. *Id.*

When State confers no exclusive privilege upon one company, it impairs no contract by incorporating a second one and conferring similar powers and privileges. *Id.*

Amendment of charter by legislature held not to be unconstitutional under this section. *Proprs. v. Sullivan*, 85 Me. 343; s. c., 27 Atl. Rep. 189. Legislation oftentimes injuriously affects interests of those with whom the contract exists, and yet impairs no obligation of contract. *Id.*]

- § 21. Private property shall not be taken for public uses without just compensation;

nor unless the public exigencies require it.

[Corporation legitimately exercising right of eminent domain is not liable for consequential damages arising without its fault or negligence. *Sumner v. Dam Co.*, 71 Me. 106.]

#### ARTICLE IV.

##### Legislative.

§ 14. Corporations shall be formed under general laws, and shall not be created by special acts of the legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the State.

Acts of incorporation are public acts. Chap. 1, § 6. General Laws, ch. 48, §§ 16-20.

[A statute granting corporate powers is inoperative until it is accepted. *Bank v. Richardson*, 1 Me. 79.

Where an act amendatory of charter contains no provision requiring a formal acceptance of it, acceptance may be implied from corporate acts. Grants beneficial to the corporation may be presumed to have been accepted. *R. R. Co. v. Smith*, 47 Me. 34.

Acceptance of a charter must be proved by the best evidence in the power of party relying upon it. The records of a corporation are the regular evidence of its acts. *Hudson v. Carman*, 41 Me. 84; *Coffin v. Collins*, 17 id. 440; *Whitman v. Church*, 24 id. 236.

If records cannot be produced, acceptance of charter may be proved by implication from the acts of the company. *Hudson v. Carman*, supra; *Penobscot Boom v. Lamson*, 16 Me. 224; *Dam Co. v. Gray*, 30 id. 547; *Sampson v. R. S. M. Co.*, 36 id. 78; *M. & S. Fund v. Kendrick*, 12 id. 381; *M. & S. Fund v. Parks*, 19 id. 441; *Trott v. Warren*, 11 id. 227.

Legislature may incorporate a new and distinct corporation out of two or more previously existing corporations. *State v. R. R. Co.*, 66 Me. 488.

In granting charter by State legislature, the presumption is that all preliminary requirements of law have been complied with. *McClinch v. Sturges*, 72 Me. 288.

Constitutional amendment, which took effect in 1875, requiring formation of corporations to be under general statutes, does not apply to charter granted by legislature before the amendment, although amended by it afterward. *Farnsworth v. R. R. Co.*, 83 Me. 440; 22 Atl. Rep. 373.

The four years at expiration of which charter becomes by statute forfeited, unless company be organized and business commenced within that time, do not run against corporation, observing the statutory requirements beyond that time after its charter has been amended. The amendment is a legislative waiver of any forfeiture. *Id.*]

## REVISED STATUTES OF MAINE—1884.

TITLE I. THE STATE AND ITS  
SOVEREIGNTY.

## CHAPTER I.

## Statutes and Rules of Construction.

## Sec. 6. Rules of construction.

XIII. The word "person" may include a body corporate.

XXVI. (As amended March 25, 1895, and March 26, 1897.) Acts of incorporation shall be regarded in legal proceedings as public acts, and be in force on the date of their approval. All acts of incorporation granted since January one, eighteen hundred and ninety-three, become null and void in two years from the day when the same take effect, unless such corporations shall have organized and commenced actual business under their charters. The organization of any corporation which may be hereafter organized under any general law of this State becomes null and void within two years from the day when its certificate of incorporation has been filed in the office of the Secretary of State, unless such corporation shall have commenced actual business under its organization.

[Section referred to. *Stevens v. Bank*, 70 Me. 181. And applied. *State v. McAllister*, 24 Me. 143; *Belmont v. Morrill*, 69 Id. 317.]

## CHAPTER VI.

## The Assessment and Collection of Taxes.

- Sec. 5. Personal estate includes shares of stock.  
 13. Taxes on personal estate, how and where assessed.  
 14. Exceptions to the rule of the preceding section.  
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 16. Stock of corporations for supplying water or gas, how taxed.  
 17. Duty of assessors, collectors, treasurers and cashiers relating to same.  
 18. Clerk failing to make return, property deemed corporate.  
 19. Taxes, how assessed and collected; franchise may be sold in certain cases.  
 21, 22. Stock of companies invested in banks, how taxed.  
 28. Property of manufacturing, mining and smelting corporations taxed, where; shares in the capital stock not to be taxed to the owners.  
 30. Bank and other stocks owned out of State, how taxed.  
 31. Cashier or other officer required to exhibit books, and deliver certified copies of records of dividends; liability for neglect.

Sec. 33. Collectors of taxes shall give notice.

138. Mode of distraining shares in corporations.

139. Duty of corporation officer to furnish certificates of shares.

§ 5. Personal estate for the purposes of taxation, includes \* \* \* all shares in moneyed and other corporations within or without the State, except as otherwise provided by law; \* \* \*.

[The capital stock of a bank can be assessed only once, and that upon the stockholders to the value of their shares. *Bank v. Augusta*, 36 Me. 255. But property composing no part of its capital, so held by a bank, that no other person or corporation could be legally taxed therefor, as owner, is liable to be assessed to such bank. *Id.* A corporation owning personal property, not composing a part of its capital, is liable to be taxed for it in the town of its established place of business. *Id.*

"All shares in moneyed corporations," includes shares in national banks. *Stetson v. Bangor*, 56 Me. 274.]

§ 13. All personal property within or without the State, except in cases enumerated in the following section, shall be assessed to the owner in the town where he is an inhabitant on the first day of each April.

§ 14. The excepted cases referred to in the preceding section are the following:

III. Machinery employed in any branch of manufacture, goods manufactured or unmanufactured, and real estate belonging to any corporation, except when otherwise expressly provided, shall be assessed to such corporation in the town or place where they are situated or employed; and in assessing stockholders for their shares in any such corporation, their proportional part of the value of such machinery, goods and real estate, shall be deducted from the value of such shares.

Taxation of property of real estate corporations. See Act of 1893, at p. 36; see ch. 46, §§ 30-35.

[Legislature can impose no other taxes upon a corporation than those provided for in its charter, when the charters so expressly provided. *State v. R. R. Co.*, 69 Me. 44.

Before amendment of Constitution in 1875, legislature had power to create a corporation perpetually and exempting it from taxation. *Id.*

Above statute construed. *Railway v. City*, 37 Me. 444; *R. R. Co. v. City*, 60 Id. 199.]

§ 15. The stock of toll bridges shall be taxed as personal property, to the owners

thereof, in the towns where they reside, except stock owned by persons residing out of the State, which shall be taxed in the town where the bridge is located, and where such bridge is in two towns, one-half of such stock so owned by persons residing out of the State shall be assessed and taxed in each town.

§ 16. Stock in any local corporation, chartered for the purpose of supplying towns with water or gas, held by any person unknown, or out of the State, shall be taxed in the town where such corporation is located or transacts its ordinary business, as provided for the taxation of bank stock, in section thirty.

§ 17. The powers of assessors, collectors and treasurers, and the liens on the stock, shall be the same as provided in sections thirty, thirty-one, thirty-three and thirty-four, and the duties therein imposed on cashiers, shall be performed by the treasurers of such corporations.

§ 18. When the clerk of a corporation holding property liable to be taxed, fails to comply with section thirty, of chapter forty-six, whether the corporation was chartered before or since the separation of Maine from Massachusetts, such property for the purposes of taxation, shall be deemed corporate property, liable to be taxed to the corporation, although its stock has been divided into shares and distributed among any number of stockholders.

§ 19. Such property, both real and personal, is taxable for State, county, city, town, school district, and parochial taxes, to be assessed and collected in the same manner and with the same effect as upon similar taxable property owned by individuals. If the corporation has the right to receive tolls, such right or franchise may be taken and sold on warrant of distress for payment of such taxes, as such property is taken and sold on execution.

§ 21. When an insurance or other incorporated company is required by law to invest its capital stock or any part thereof in the stock of a bank, or other corporation in the State, for the security of the public, such investments shall not be liable to taxation except to the stockholders of the company so investing as making a part of the value of their shares in the capital stock of said company.

§ 22. When the capital stock of any insurance company incorporated in the State, is taxed at its full value, the securities and pledges held by said company to the amount of said stock, are exempt from taxation; but if the pledge or security consists of real estate in a town other than that where the stockholder resides, it shall be taxed where it lies, and the stock shall be exempt to the amount for which it is assessed.

§ 28. The buildings, lands, and other property of manufacturing, mining and smelting corporations, made personal by their char-

ters, and not exempt from taxation, and all stock used in factories, shall be taxed to the corporation, or to the persons having possession of their property or stock, in the town or place where the corporations are established, or the stock is manufactured; and there shall be a lien for one year on such property and stock for payment of such tax, and it may be sold for payment thereof, as in other cases; and shares of the capital stock of such corporations shall not be taxed to their owners.

Taxation of real estate of corporations. See Act 14, at p. 36.

[The value of real estate of a corporation must be deducted from the value of the shares of the stock of the corporation, in assessing a tax upon the latter. *Wheeler v. Comrs.*, 88 Me. 174; s. c., 33 Atl. Rep. 988.]

§ 30. (Amended, L. 1891, p. 140.) Stock of any bank or other corporation, except a manufacturing corporation, held by persons out of the State, or unknown, which has not been certified according to section thirty of chapter forty-six of the Revised Statutes, in any town in the State, and is not there assessed; and the stock of any bank or such other corporation appearing by the books thereof to be held by persons residing out of the State, or whose residence is unknown to the assessors, shall be assessed in the town where such bank or other corporation is located, or transacts its ordinary business; and such town has a lien on such stock and all dividends thereon, from the date of such assessment, until such tax and all costs and expenses arising in the collection thereof are paid. No assignment, sale, transfer or attachment passes any property in such stock unless the vendee first pays such tax and costs; cashiers of banks and clerks of such other corporations shall return to the assessors of the town where such bank or other corporation is located or transacts its business, all the stock in such bank or other corporation not returned to the assessors of other towns, according to said section thirty of chapter forty-six, Revised Statutes; and such returns shall be made at the time and in the manner prescribed therein, and shall be the basis of taxation of such property.

§ 31. (Amended, L. 1891, p. 141.) The cashier or other officer of each bank or other corporation, except a manufacturing corporation, shall exhibit on demand, to the assessors of any town all the books of such bank or other corporation that contain any record of the stock of such bank or other corporation or any dividend, declared or paid thereon, and if requested, shall deliver to them a true and certified copy of so much of said record as they require. Should any cashier or other officer neglect or refuse to perform the duties required by this and the preceding section, the assessors may doom such bank or other corporation in such sum as they deem reasonable, and the as-

assessment shall bind such bank or other corporation and the tax thereon shall not be abated, and for such neglect or refusal, such cashier or other officer forfeits five hundred dollars to be recovered in an action of debt, half to the prosecutor and half to the State.

§ 33. (As amended March 23, 1897.) The collector of a town, to whom has been committed a tax upon the stock of any bank or other corporation, except a manufacturing corporation, shall, within thirty days after the bills of assessment are delivered to him, cause a written notice to be delivered to the cashier or president thereof, stating the description of stock taxed, to whom assessed, if stated in the bills, and the tax thereon. No dividend shall be paid on such stock after such notice until the tax and all cost thereon are paid. The cashier may pay such tax, and payment shall constitute a charge in offset against any dividend thereon. Should such tax remain unpaid for ninety days after such notice, the collector may sell such stock in the manner specified in sections one hundred and thirty-eight and one hundred and thirty-nine. For the purpose of collecting taxes on bank stock, collectors may act in any town.

§ 138. For non-payment of taxes, the collector or constable may distrain the shares owned by the delinquent in the stock of any corporation; and the same proceedings shall be had as when like property is seized and sold on execution.

§ 139. The proper officer of such corporation, on request of such constable or collector, shall give him a certificate of the shares or interest owned by the delinquent therein, and issue to the purchaser certificates of such shares according to the by-laws of the corporation.

#### TITLE IV. CORPORATIONS OF VARIOUS KINDS.

Ch. 48. Corporations in general.  
48. Manufacturing corporations.

#### CHAPTER XLVI.

##### Corporations in General.

- Sec. 1. This chapter applies to all corporations.  
2. General powers of corporations.  
3. First meeting, how called; organization valid, whether made under this chapter or under chapter 48.  
4. Any meeting may be called by a justice, when no other legal mode.  
5. When all shareholders are present and sign record, meeting is legal.  
6. By-laws, what they may determine; how name may be changed, and effect thereof.  
7. Whoever presides at meetings called by a justice, not responsible for error.  
8. On failure to have annual meeting, officers hold over; effect of electing officers on another day.  
9. Clerk to call a meeting when objections are made to elections held on another day.  
10. Clerk's office and records, where to be kept; records and books must be open to inspection; to be produced in court.

- Sec. 11. Clerk to file certificate of election in registry of deeds; attested copy, evidence of clerkship.  
12. Transfer of shares, how made; certificates, by whom signed; officers not to sign blanks for use, nor without knowledge of apparent title.  
13. Proxies, powers of attorney, and rights under them.  
14. Representation of mortgaged stock.  
15. When capital becomes impaired, stock may be reduced; par value of shares to be reduced accordingly.  
16. Remedy for objecting stockholder; proceedings.  
17. Copy of proceedings to be filed with secretary of State; penalty.  
18. Such corporation may authorize issue of new shares.  
19. Preventing use of records and books, penalty for.  
20. Property and franchise may be taken for debts.  
21. Corporations are bound by parol or implied contracts.  
22. Foreign, may sue and be sued here; acts of their agents bind them.  
23. Acts of incorporation, liable to be altered or repealed.  
24. Corporations continue for certain purposes for three years after charter expires.  
25. Court may appoint trustees; their powers.  
26. Trustees to pay debts, and divide balance.  
27. When and by whom a bill in equity may be filed for dissolution of a corporation; notice and proceedings.  
28. Court may appoint receivers and trustees, issue injunctions, pass interlocutory decrees, and superintend collection and distribution of assets.  
29. Personal liability of officers and shareholders unaffected.  
30. Cashiers and clerks to ascertain residence of stockholders and report same to town assessors by the 5th of April for taxation.  
31. To make similar returns to secretary of State by the 5th of December, for use of legislature.  
32. Such return may be mailed; penalty for neglect.  
33. Secretary of State to notify attorney-general, who shall enforce penalty.  
34. Suit to be discontinued, if returns are made within thirty days.  
35. Additional penalty imposed on delinquent corporation officer.  
36. When and how corporations ceasing to transact business, may be excused from filing annual returns.  
37. Stockholders' liability for company debts; to what extent, and how liable.  
38. Stockholders' liability in corporations created since March 17, 1831.  
39. Creditor may demand of stockholder to show property.  
40. To commence action within six months after judgment against corporation.  
41. Stockholders' claim may be set off; such claims described.  
42. Treasurer to keep a record of stockholders' claim against company.  
43. Clerk to furnish to officer names of stockholders.  
44. Stockholders, except in banks, not liable beyond amount of stock.  
45. Capital stock subscribed, stands for security of creditors; subscriptions must be paid bona fide.  
46. Fraudulent dividends and withdrawals of stock, void against creditors, receivers or trustees.  
47. Proceedings by bill in equity; limitations of stockholders' liability.

## Corporations; powers — R. S., Tit. iv, ch. xlv, §§ 1, 2.

- Sec. 48. What may be proved by any such defendant.
49. Stockholder paying for corporation, may recover.
50. Officer having execution may sell real estate in certain cases.
51. Corporations not allowed to divide capital, until debts are paid.
52. Judgment creditor may file bill in equity in certain cases.
53. Proceedings, trial and decree in the suit.
54. Estate of corporations on dissolution is vested in shareholders.

**Section 1.** This chapter applies to all corporations organized by special acts of the legislature or under the general laws of the State, except so far as it is inconsistent with such special acts or with public statutes, concerning particular classes of corporations.

See ch. 48, on manufacturing corporations.

[Provisions of this chapter apply to all railroad corporations, unless especially exempted therefrom by charter. *Came v. Brigham*, 39 Me. 35.]

§ 2. (As amended March 1, 1893.) Corporations may (1) sue and be sued, (2) plead and be impleaded, in their corporate name:

Corporation bound by implied contracts. § 21. Foreign, may sue and be sued. § 22. Suits against stockholders. §§ 37 et seq. Officers having execution may take debts due the corporation. Ch. 48, § 10. Execution against real estate. Ch. 76, §§ 43-45. Venue and commencement of actions. Ch. 81. Proceedings in civil actions. Ch. 82, §§ 16, 123. Execution against personality. Ch. 81. Trustee process. Ch. 86.

[Private corporations existing by the laws of other States have power to sue, in their corporate name, in this State; but their existence must be proved, by satisfactory evidence, like any other material facts. *Mfg. Co. v. Armstrong*, 17 Me. 31.

The existence of plaintiff corporation and its capacity to sue are admitted by pleading the general issue. *Bank v. Bagley*, 68 Me. 249.

A judgment against a corporation cannot be impeached for any defect in service of the original process by any party privy to it. To such it is valid until reversed. *Came v. Brigham*, 39 Me. 35.

A corporation may be sued, in its own name, on a contract made to an agent for its benefit. *Garland v. Reynolds*, 20 Me. 45; *Levant, etc. v. Parks*, 10 id. 441; *Acad. v. Starrett*, 15 id. 443.

The plea of general issue, to an action by a corporation, admits only its power to sue and be sued. *Trustees v. Fisher*, 30 Me. 522; *Freeman v. M. W., etc., Co.*, 38 id. 343; *R. R. Co. v. Veazie*, 39 id. 571; *R. R. Co. v. Dunn*, 39 id. 587; *Bank v. Bagley*, supra; *Steamboat Co. v. Sewall*, 78 Me. 167; s. c., 3 Atl. Rep. 181.

It is not essential to existence of corporation, or to its right to maintain actions at law, that its clerk should have filed in office of register of deeds a certificate of his appointment. *Dam Co. v. Gray*, 30 Me. 547; *Hudson v. Carmen*, 41 id. 84.

To maintain action under a special statute authority, its terms must have been strictly complied with. *R. R. Co. v. Ritchie*, 40 Me. 425.

In absence of proof that suit brought in name of a corporation was not authorized by it, its assent will be presumed, although the corporation is but a nominal party. *R. R. Co. v. Smith*, 47 Me. 34.

Venue of actions by railroad corporation whose road passes through two counties. *R. R. Co. v. Stevens*, 28 Me. 434.

Assumpsit cannot be maintained upon contract of a corporation made through an agent, who puts to it a seal, though it has not their common seal. *Porter v. R. R. Co.*, 37 Me. 349.

A corporation, acting within its powers, not liable for injury, suffered by an individual, by alteration of the flux and reflux of tide. *Parker v. Mill Dam Co.*, 20 Me. 353.

In an action by a corporation, defendant cannot take advantage of any abuse or misuse of corporate powers not applicable to question in controversy; or object that no mode of service, of attachment, or means of redress, or relief is provided. *Boom Corp. v. Lamson*, 16 Me. 224.

Where charter provides for admission of members as witnesses in cases in which the corporation is a party, one member cannot object to admission of others as witnesses, in an action between him and the corporation. *Cram v. Bangor House*, 12 Me. 354.

Declarations of stockholder or director not admissible in evidence against corporation, made when not acting as agent thereof. *Tolleys v. Ins. Co.*, 14 Me. 141; *Ruby v. Soc.*, 15 id. 306.

It is incumbent on one claiming title under deed from a corporation, excluded by an agent, to prove that such agent had been legally authorized. *Miller v. Ewer*, 27 Me. 509.

Corporate liability, under charter, for damages sustained through negligence. *Weymouth v. P. L. D. Co.*, 71 Me. 29. It must be shown that its agents exercised reasonable skill and ordinary diligence. Id. And whether agents have been negligent is question for jury. Id.

Corporation legitimately exercising right of eminent domain is not liable for consequential damages arising without its fault or negligence. *Sumner v. Dam Co.*, 71 Me. 106.

Corporation liable on contract for money loaned to it. *Castle v. Foundry Co.*, 72 Me. 167.

A promissory note reciting "we" promise to pay, and signed "A. B., Treasurer Gas Light Company," is the note of an individual and not of the corporation. *McClure v. Livermore*, 78 Me. 33; s. c., 6 Atl. Rep. 11.

Power under charter of water company to establish prices and rents to be paid for water, subject to control of legislature, does not deprive the court of its jurisdiction to adjudicate between parties upon their legal rights. *Water Co. v. Adams*, 84 Me. 472; s. c., 24 Atl. Rep. 840.

A corporation that lets by contract, to each of several persons, the driving of logs in same stream is not liable to them for their torts upon each other. *Darling v. L. D. Co.*, 85 Me. 221.

Directors have authority, in behalf of the corporation, to release person whom they proposed to call as a witness. *Lewis v. Bank*, 32 Me. 90.

Inasmuch as an insolvent corporation cannot receive and discharge any insolvency, the fact that a defendant corporation in an action at law has been declared an insolvent debtor, shows no cause for restraining the prosecution of the action at law to immediate final judgment. *Miller v. Packing Co.*, 88 Me. 605; s. c., 34 Atl. Rep. 527.

Fact that plaintiff in an action at law against an insolvent corporation intends to levy the execution upon property which the corporation undertook to convey to other parties before its insolvency, does not show any right of the defendant corporation to restrain such levy. Id.]

(3) Have a common seal alterable at pleasure;

See Act of 1889, relating to corporate seals, at p. 32.

[At common law "the impression of a seal is not a seal;" but otherwise under present statutes. *Woodman v. R. R. Co.*, 50 Me. 549.

Assumpsit cannot be maintained upon a contract of a corporation made through an agent who puts to it a seal, though it has not their common seal. *Porter v. R. R. Co.*, 37 Me. 349.

Agent of a corporation may be appointed without seal, whatever may be the purpose of the

## Corporate powers — R. S., Tit. iv, ch. xlv, §§ 2, 3.

agency. *Fitch v. Mill Co.*, 80 Me. 34; s. c., 12 Atl. Rep. 732.]

(1) Elect all necessary officers; prescribe their duties and fix their compensation;

See ch. 48, § 2, note. Failure to elect officers. §§ 8, 9. Officers not to sign blanks. § 12. Court may appoint trustees. § 26. And receivers. § 28. Personal liability of officers. §§ 29, 35. Treasurer may sue in his own name, when. Ch. 82, § 16. Forgery of officer's signature, penalty. Ch. 121, § 9. Officer issuing false certificates of stock, penalty. *Id.*, § 10.

(5) Make by-laws consistent with the laws of the State and their charters;

By-laws may determine what. § 6.

[Powers of a corporation are derived from the law and its charter. And no by-law of a corporation can enlarge its corporate powers. *Andrews v. Ins. Co.*, 37 Me. 256.

By-laws of a corporation are obligatory upon all its members, if not repugnant to the laws of the land. *Came v. Brigham*, 39 Me. 35.

The by-laws of a corporation, made in pursuance of its charter, are equally binding on all its members acquainted with their method of business, as any public law of the State. *Cummings v. Webster*, 43 Me. 192.

Though made in pursuance of an express power, a by-law must be lawful and reasonable in order to be valid. If contrary to the common or statute law, it is void. *R. R. Co. v. Kendall*, 31 Me. 479; *Bridge v. Woodman*, *id.* 573; *Came v. Brigham*, *supra*; *Driscoll v. Soc.*, 59 Me. 474.]

(6) And hold and convey lands and other property.

See Const., art. I, § 21. Sale of real estate on execution. § 50; ch. 76, §§ 43-45. Division of property upon dissolution, § 54.

[Unless specially empowered, directors have no authority to sell any portion of the corporate estate essentially necessary for transacting its business. *Rollins v. Clay*, 33 Me. 132.

Nor to make donations from, or misappropriate corporate funds, in violation of laws and rules regulating its mode of action. *Bank v. Johnson*, 24 Me. 490.

At common law corporations have power to sell and convey their property real and personal, and to mortgage it for security on their debts. *Fitch v. Mill Co.*, 80 Me. 34; s. c., 12 Atl. Rep. 732. But this right may be limited by statute, or by the acts under which they are organized. *Id.*]

Directors must be and remain stockholders, except that a member of another corporation, which owns stock and has a right to vote thereon, may be a director.

**[Corporate powers and duties in general.** — Rule that a grant of privileges is a grant of necessary incidents to the enjoyment of those privileges, does not apply so as to embrace as incidental privileges what are expressly excepted or forbidden in the grant. *Plummer v. Lumber Assn.*, 67 Me. 363.

Corporations originating according to the rules of the common law must be governed by it in their organization and exercise of powers. *Penobscot Boom v. Lamson*, 16 Me. 224.

The existence of a corporation may be inferred from the exercise of its corporate powers. *Dam*

*Co. v. Gray*, 30 Me. 547; *Sampson v. B. S. M. Corp.*, 36 *id.* 78.

Corporations possess only such powers as law of their creation confers. *Franklin Co. v. Bank*, 68 Me. 43. And parties dealing with them are chargeable with notice of their powers, and limitations thereof, and cannot plead ignorance to avoid defense of ultra vires. *Id.*

All votes and proceedings of persons professing to act as corporators, when assembled beyond limits of State granting charter, are void. *Miller v. Ewer*, 27 Me. 509; *Freeman v. Mill Co.*, 38 *id.* 343.

A corporation duly organized and acting within limits of State granting charter may act and contract, by agent, beyond limits of that State. *Miller v. Ewer*, *supra*.

A corporation empowered to make contracts in writing cannot delegate such power. *Asylum v. Johnson*, 43 Me. 180.

An authority given by a vote of a corporation to sell and convey its real estate may be reasonably construed to include a right to make a binding contract at a future day. *Bank v. Hamblet*, 35 Me. 491.

Corporations cannot purchase, or hold, or deliver any stocks of other corporations, unless expressly authorized to do so by law. *Franklin Co. v. Bank*, *supra*.

Corporate powers cannot be enlarged by by-laws. *Andrews v. Ins. Co.*, 37 Me. 256.

Whether duty imposed upon a corporation is mandatory or merely directory is to be determined by its nature and object, by what may be understood to be the intention of the legislature. *Middle Bridge v. Brooks*, 13 Me. 391.

A corporation is not bound by acts or declarations of individual members, except when acting as agents. *Ruby v. Soc.*, 15 Me. 306; *Hersey v. Veazie*, 24 *id.* 9.

Person not a member of a corporation is not bound by provisions of any vote it may have passed, or any contract it may have made, to which he is not a party. *Weymouth v. P. L. D. Co.*, 71 Me. 29.

Powers and duties of a dam company construed. *Mill Co. v. Dam Co.*, 77 Me. 337. Of a company for manufacturing lumber. *Burbank v. Mill Co.*, 75 Me. 373. Of a water company. *Riche v. Water Co.*, 75 Me. 91; *Water Co. v. Tillson*, 69 *id.* 255. Of a log driving company. *Patterson v. Log Driving Co.*, 71 Me. 44; *Weymouth v. Log Driving Co.*, *id.* 29.

An engineer in employ of a railroad has no implied powers to bind company by his contracts. *Gardner v. R. R. Co.*, 70 Me. 181.

Contract made by a corporation which is unlawful and void, because beyond scope of its powers, does not become lawful by being carried into execution. *Gas Light Co. v. G. F. & L. Co.*, 85 Me. 532; s. c., 27 Atl. Rep. 525.

Where a new corporation is formed out of two or more previously existing, and by an act is to "have the powers, privileges and immunities possessed by each of the corporations," whose union constitutes such new corporation, it will have only the privileges, powers and immunities, which the corporation, with the fewest privileges, powers and immunities possessed, and which were common to all. *State v. R. R. Co.*, 66 Me. 488.]

§ 3. Their first meeting, unless otherwise provided, shall be called by a notice signed by some person named in the act of incorporation, setting forth the time, place, and purpose, of the meeting, a copy of which shall be delivered to each member, or published in a newspaper in the county, if any, otherwise in the State paper, seven days before the meeting; but the organization of all existing corporations made in accordance with this chapter, or chapter forty-eight, are equally valid.

See ch. 48, §§ 3, 17. Organization of corpora-



tions specially chartered. See Act 12, at p. 36. Under general law. See Act 15, at p. 37.

[First meeting cannot be called at a place without the State, and all votes and proceedings at a meeting so held are wholly void. *Miller v. Ewer*, 27 Me. 509; *Freeman v. Power & Mill Co.*, 38 Id. 342.]

Organization is not defective because notice of first meeting is not served on each corporation, when it appears that the powers conferred by charter have been assumed by persons by whom it was intended they should be enjoyed. *McClinch v. Sturgis*, 72 Me. 288.]

§ 4. When a meeting cannot be otherwise called, three members of the corporation may make written application to a justice of the peace where it is established, if local, or if not, where it is desired to hold the meeting, who may issue his warrant to either of such members, directing him to call a meeting by giving the notice required in the preceding section. When the law requires a notice to be published in some newspaper, or posted in some public place, the justice shall designate in his warrant the newspaper or place.

[See *College v. Mallett*, 12 Me. 398.]

§ 5. When all the members of a corporation are present at a meeting, and sign a written consent on the record thereof, such meeting is legal.

§ 6. Corporations may determine by their by-laws, the manner of calling and conducting meetings; the number of members that constitute a quorum; the number of votes to be given by shareholders; the tenure of the several officers; the mode of voting by proxy; and of selling shares for neglect to pay assessments; and may enforce such by-laws by penalties not exceeding twenty dollars. A corporation, at a legal meeting of its stockholders, may vote to change its name and adopt a new one; and when the proceedings of such meeting, certified by the clerk thereof, are returned to the office of the secretary of State to be recorded by him, the name shall be deemed changed; and the corporation, under its new name, has the same rights, powers, and privileges, and is subject to the same duties, obligations and liabilities as before, and may sue and be sued by its new name; but no action brought against it by its former name, shall be defeated on that account, but on motion of either party, the new name may be substituted therefor in the action.

Power to make by-laws. § 2 (5).

[It does not require assent of subscriber to capital stock, to authorize legislature to change corporate name; the statute confers that right without assent. *R. R. Co. v. Book*, 68 Me. 81.]

Where by-laws of corporation, whose capital stock is divided into 400 shares, provided that no business should be transacted at any meeting of stockholders unless majority of stock was represented, held, that 201 shares constituted such a majority, and that no meeting at which a less

number was represented would be legal for transaction of business. *Mfg. Co. v. Faunce*, 79 Me. 449; s. c., 10 Atl. Rep. 250.

In order to be valid, a by-law must be lawful and reasonable. *R. R. Co. v. Kendall*, 31 Me. 471.

Above section applied. *Corporation v. Woodman*, 31 Me. 576.]

§ 7. When a meeting is called by a justice of the peace, he, or the person to whom his warrant was directed, may call the meeting to order and preside therein, until a clerk is chosen and qualified, if there is no officer present whose duty it is to preside. The person presiding is not responsible for an error in judgment in receiving or rejecting the vote of a person claiming to be a member.

§ 8. When a corporation fails to hold its annual meeting on the day appointed, the officers of the preceding year continue in the exercise of their duties, and their acts are legal, until other officers are chosen and qualified in their stead. When, upon due notice given, officers are regularly elected on any other day than that of the annual meeting, they shall hold their offices and perform their duties as if chosen on that day, unless a majority of the corporate members file with the clerk, within six months after such election, written objections thereto, and their acts shall be considered legal, until others are chosen and qualified in their stead.

[Where there is nothing in State laws or in by-laws of the corporation to limit continuance in office of its clerk, the one properly chosen remains in office until another is chosen. *Dam Co. v. Gray*, 30 Me. 547.]

Above section applied. *Hotel Co. v. Fisher*, 56 Me. 323.]

§ 9. When such a notice is filed, the clerk shall call a meeting of the corporation, at such time and place as he appoints, and give the notice required for an annual meeting, stating in it the fact that objections have been filed, and the purpose of the meeting; and officers elected at such meeting shall hold their offices, and their acts shall be considered legal, until other officers are chosen and qualified in their stead.

§ 10. (As amended March 6, 1889.) All corporations, existing by virtue of the laws of this State, shall have a clerk who is a resident of this State, and shall keep, at some fixed place within the State, a clerk's office where shall be kept their records and a book showing a true and complete list of all stockholders, their residences and the amount of stock held by each; and such book, or a duly proved copy thereof, shall be competent evidence in any court of this State to prove who are stockholders in such corporation and the amount of stock held by each stockholder. Such records and stock-book shall be open at all reasonable hours to the inspection of persons interested, who may take copies and minutes therefrom of

such parts as concern their interests, and have them produced in court on trial of an action in which they are interested. The above provisions as to list of stockholders shall not apply to any corporation doing business in this State and having a treasurer's office at some fixed place in the State where a stock-book is kept giving the names, residences and amount of stock of each stockholder.

See § 8, note.

[A corporation record is competent to show its corporators, in absence of countervailing evidence. *R. R. Co. v. Dummer*, 40 Me. 172; *R. R. Co. v. White*, 41 id. 512; *Collin v. Collins*, 17 id. 440.

When a corporation has proceeded regularly to ascertain its corporators and the owners of its stock, and has entered them in its records, all parties become thereby prima facie entitled to the rights thus secured to them. *R. R. Co. v. Dummer*, supra.

Under statutes in force in 1841, books of a corporation, so far as creditors were concerned, were conclusive evidence as to who were stockholders. Parol evidence was admissible to show that person had ceased to be a stockholder. *Stanley v. Stanley*, 26 Me. 191.]

§ 11. (As amended March 20, 1897.) Whenever there is a change in the office of clerk of a corporation, he shall, within twenty days after acceptance of the office file a certificate of his election in the registry of deeds in the district where the corporation is located, or where it has a place of business or a general agent; and an attested copy of such certificate shall be sufficient evidence that he is clerk, for service of process upon the corporation, until another certificate has been filed.

See § 8, note.

§ 12. (As amended March 10, 1893.) When the capital of a corporation is divided into shares, and certificates thereof are issued, they may be transferred by indorsement and delivery, but such transfer is not valid, except between the parties thereto, until the same is so entered on the books of the corporation as to exhibit the names and residences of the parties, the number of the shares, and the date of their transfer. Certificates of shares shall be issued to those entitled to them by transfer or otherwise, signed by the president or vice-president, and attested by the cashier, clerk or treasurer. Neither shall sign blanks and leave them for use by the other, nor sign them without knowledge of the apparent title of the person to whom they are issued. In case of the absence or disability of either of said officers, the signature of a majority of the directors in his stead is sufficient.

See ch. 48, §§ 4-7. Shares of stock sold on execution. Ch. 84, §§ 12-23. Issuing false certificates, felony. Ch. 121, § 10. Taxation of stocks. See ch. 6. Owner of pledged stock may vote it.

Ch. 46, § 14. See Act of 1897, relating to transfers, at p. 37.

[Under statutes in force in 1841, books of a corporation, so far as creditors were concerned, were conclusive evidence as to who were stockholders. Parol evidence was admissible to show that person had ceased to be stockholder. *Stanley v. Stanley*, 26 Me. 191.

When a corporation has proceeded regularly to ascertain its corporators and the owners of its stock, and has entered them in its records, all parties become thereby prima facie entitled to the rights thus secured to them. *R. R. Co. v. Dummer*, 40 Me. 172.

The corporation record is competent to show its corporators, in absence of countervailing evidence. *Id.*; *R. R. Co. v. White*, 41 Me. 512; *Collin v. Collins*, 17 id. 440.

A person becomes legally entitled to shares in a corporation by having them transferred to him on the books. The certificate of ownership is but additional evidence of the title. *Bank v. Burr*, 24 Me. 256; *Bank v. Wilson*, id. 273.

A transfer of stock, made to fulfill a contract, is not ineffectual on account of its being made two days earlier than the stipulated day. *Dodge v. Barnes*, 31 Me. 290.

Where by-laws require transfer of stock to be made by treasurer, and not by owner, treasurer thereby becomes agent of owner for that purpose. *Id.*

Where by-laws provide that shares should be transferable by indorsement in writing by the holder, "in presence of the cashier or two witnesses," held, that to make a valid transfer, cashier or witnesses must attest signature of holder. *Dane v. Young*, 61 Me. 160.

Transfer made in violation of by-laws is void, and cannot be made valid by ratification. *Id.*

Mandamus will not be granted to compel transfer of stock upon books of a corporation, or to compel certificates of stock to be issued, when. *Townes v. Nichols*, 73 Me. 515.

Transfer of stock not against public policy, when. *Greene v. Nash*, 85 Me. 148; s. c., 26 Atl. Rep. 1114.

Above section applied. *Fiske v. Carr*, 20 Me. 301.

No transfer of stock will secure it from attachment until it is entered on the books. *Bank v. Cutler*, 49 Me. 315.

Assignee of certificates of stock, who leaves them, with assignments unrecorded, in possession of assignor, not guilty of negligence, when. *Eaton v. Tel. Co.*, 68 Me. 63.]

§ 13. Shareholders may be represented by proxies granted not more than thirty days before the meeting which shall be named therein; they are not valid after a final adjournment thereof. They may be represented by a general power of attorney, produced at the meeting, until it is revoked. Shares hypothecated to the corporation shall not be represented. No person can give, by right of representation, a greater number of votes than is allowed to any one by the charter or by-laws.

See § 2 (4), and note.

§ 14. After the owner of stock in a corporation has transferred, mortgaged or in any way pledged the same to another for security merely, and it so appears in such transfer, mortgage or pledge, and on the books of the corporation, such owner continues to have the right to vote upon such

## Reduction of capital: foreign corporations — R. S., Tit. iv, ch. xlv, §§ 15-22.

stock at all meetings of the stockholders until his right of redemption ceases.

§ 15. Whenever the assets of a corporation have been so diminished by losses or depreciation of property, that its capital is impaired, such corporation, at any meeting of the stockholders legally called therefor, with the consent of not less than two-thirds in amount of all its outstanding stock, expressed at such meeting or at any adjournment thereof, may reduce such stock to the extent of such impairment, and thereupon the par value of all shares issued or to be issued shall be reduced proportionally.

See ch. 48, §§ 8, 20.

§ 16. Within thirty days after such reduction, any stockholder who has not agreed thereto, may file a bill in equity in any county in which said corporation has an established place of business, or in which it held its last stockholders' meeting, for a revision of its proceedings in making said reduction, upon which bill such proceedings may be annulled or modified, so that such reduction shall not exceed the actual impairment of capital. The action of the court, or, if no bill is filed as aforesaid, the action of the corporation, as provided in the preceding section, shall be conclusive upon all parties, whether stockholders or creditors, and such reduction shall not create any personal liability of any stockholder or officer thereof.

See ch. 48, § 20.

§ 17. The clerk of said corporation shall file with the secretary of State a certified copy of such proceedings, within thirty days after they are taken, or forfeit one thousand dollars, to be recovered by action of debt in favor of any existing or future creditor of such corporation first suing therefor in any court or county in which a transitory action between the same parties can be brought.

§ 18. Simultaneously with or after such reduction of its stock, such corporation may from time to time authorize the issue of new shares, of the reduced par value, until the gross capital equals the gross capital authorized by its charter or articles of association before such reduction was made, although the new shares should increase the whole issue beyond the number authorized by such charter or articles.

See ch. 48, § 20.

§ 19. Any officer or member of a corporation, who prevents access to and use of the records and books as provided in section ten, is liable for all damages occasioned thereby, in an action on the case.

§ 20. The property of any corporation, and the franchise of one having a right to receive a toll established by the State, with

its privileges and immunities, are liable to attachment on mesne process and levy on execution for debts of the corporation, in the manner prescribed by law.

§ 21. Corporations are bound by parol contracts made by an agent authorized by vote or by its by-laws. Contracts may be implied from corporate acts, or from the acts of a general agent.

See powers of corporations. § 2. Agent guilty of larceny. Ch. 120, § 9.

[Authority of agent need not be proved by record or writing, but may be presumed from acts and general course of business. *Warren v. Ins. Co.*, 16 Me. 439.

Individual members of a corporation have no authority to call agents or officers thereof to account, or to make settlements with them. *Hershey v. Veazie*, 24 Me. 9; *Ruby v. Soc.*, 15 id. 306.

Where corporation makes a contract through an agent, who puts to it a seal, it becomes the deed of the corporation though it has not the common seal. *Porter v. R. R. Co.*, 37 Me. 349.

Powers of a general agent construed. *Whitney v. S. P. M. Co.*, 39 Me. 316.

Authority of agent may be shown by other evidence than the by-laws. *Brown v. Donnell*, 49 Me. 421. May be shown by acts and general course of business. *Badger v. Bank*, 26 Me. 428.

Corporation may ratify acts of agent so far as they were within its powers, but no further. *Boon Corp. v. Whiting*, 29 Me. 123.

Alteration of policy of insurance by agent, binding upon the company, when. *Warren v. Ins. Co.*, *supra*.

Agent of a corporation may be appointed without seal, whatever may be the purpose of agency. *Fitch v. Mill Co.*, 80 Me. 34; s. c., 12 Atl. Rep. 732.

In matters where acts of agent of corporation in transfer of personal property require no formal instrument under seal, as in sale or mortgage of personal property, not necessary that authority should be given by a formal vote. *Fitch v. Mill Co.*, 80 Me. 34; s. c., 12 Atl. Rep. 732.

Such authority may be inferred from conduct of officers, or from their knowledge and neglect to make objection, as in the case of individuals. *Id.*

Railroad engineer has no implied power to bind company by his contracts. *Gardner v. R. R. Co.*, 70 Me. 181.

A promise may be implied on part of a corporation from acts of its agent, whose powers are of a general character. *Abbott v. Hermon*, 7 Me. 118.

Where bank claims benefit of an unauthorized contract of cashier, it thereby ratifies the contract. *Bank v. Curtis*, 24 Me. 36.

Corporations are subject to same laws in relation to acts of their agents as individuals are. *Bank v. Johnson*, 24 Me. 490.]

§ 22. Corporations existing by the laws of another State or of a foreign jurisdiction, may sue or be sued by their corporate name in this State; and if they have property in this State it may be attached and appraised and set off on execution, as the property of non-resident individuals. The acts of their agents have the same effect as the acts of agents of foreign private persons, unless prohibited by law.

Power of corporation to sue and be sued. § 2 (2), and note. Statement required from foreign corporation. See Act of 1889, as amended in 1891, at p. 23.

[A corporation duly organized and acting within

limits of State granting charter may act and contract, by agent, beyond limits of that State. *Miller v. Ewer*, 27 Me. 507.

But all votes and proceedings of persons professing to act as corporators, when assembled beyond limits of State granting charter, are void. *Id.*; *Freeman v. Mill Co.*, 38 Me. 343.

Comity does not require courts of this State to permit foreign receivers to exercise privileges detrimental to our own citizens, while pursuing appropriate legal remedies here. *Chase v. Ins. Co.*, 55 Me. 290.

Action may be maintained in this State against a foreign corporation. *Williams v. Ins. Co.*, 29 Me. 465. And in such action jurisdiction is conferred by attachment of defendant's property. *Id.*

Dissolution of a corporation in another State will not prevent an action commenced against it here from proceeding to judgment unless it be shown that the corporation is utterly extinct. *Hunt v. Ins. Co.*, 55 Me. 290.

A corporation can have legal residence only in the State creating it, although by comity it may do business, through its agents, in other States. *Chaffee v. Bank*, 71 Me. 514.

A State may permit foreign corporation to transact business within its limits upon such terms and conditions as it may prescribe, not inconsistent with Constitution and laws of the United States. *Cousins v. Lovejoy*, 81 Me. 467; s. c., 17 Atl. Rep. 495.

Private foreign corporation has power to sue in its corporate name in this State, but its existence must be satisfactorily proved, like any other material facts. *Mfg. Co. v. Armstrong*, 17 Me. 34.]

§ 23. Acts of incorporation, passed since March seventeen, eighteen hundred and thirty-one, may be amended, altered, or repealed by the legislature, as if express provision therefor were made in them, unless they contain an express limitation: but this section shall not deprive the courts of any power which they have at common law over a corporation or its officers.

See Const., art. I, § 11.

[Statute by which State reserves to itself right to amend, alter and repeal all acts of incorporation is in full force, and applies to all subsequent corporations, whether organized under general or special laws. *State v. R. R. Co.*, 66 Me. 488.

Creditor of a corporation can interpose no valid objection to repeal a charter by legislature on ground that it would prevent prosecution of a suit which had been commenced against it. *Read v. Bank*, 23 Me. 318.

Dissolution of a corporation by act of legislature deprives it of corporate existence. *Hunt v. Ins. Co.*, 55 Me. 290.

Dissolution can take place how. *Boom Corp. v. Lamson*, 16 Me. 224.

Repeal by charter operates to dissolve attachments against the corporation. *Bowker v. Hill*, 60 Me. 174.

Power and duty to determine manner in which a corporation shall perform its public duties devolves upon State tribunals. *Comrs. v. R. R. Co.*, 63 Me. 269.

Exemption from taxation in charter of corporation held to be perpetual and irrevocable. *State v. R. R. Co.*, 69 Me. 44.]

§ 24. Corporations, whose charters expire or are otherwise terminated, have a corporate existence for three years thereafter: to prosecute and defend suits; to settle and

close their concerns; to dispose of their property; and to divide their capitals.

[If charter of a corporation has expired, it may be revived in all its original force by subsequent statute; and this is merely a revival of the former corporation, and not the creation of a new one. *Bank v. Richardson*, 1 Me. 79.

The judgment of another State, decreeing a dissolution, and appointing receivers to wind up a corporation created by its laws, will not prevent an action commenced against such corporation here, prior to such dissolution, from proceeding to judgment, unless it be shown that the corporation is utterly extinct. *Hunt v. Ins. Co.*, 55 Me. 290.]

§ 25. When the charter of a corporation expires or is terminated, a creditor or stockholder may apply to the supreme judicial court, which may appoint one or more trustees to take charge of its estate and effects, with power to collect its debts, and prosecute and defend suits at law; and to sell and convey its real estate; and if sold at auction, the same notice shall be given as in the sale of lands of corporations on execution. The court has jurisdiction in equity of all proceedings therein, and may make such orders and decrees, and issue such injunctions as are necessary.

Corporations are within the Insolvent Law. Ch. 70, § 61.

[Trustees are to collect the debts and dispose of the assets of the corporation and then make a ratable division of the same. *Bowker v. Hill*, 60 Me. 174.]

§ 26. The debts of the corporation shall be paid in full by such trustees, when the funds are sufficient; when not, ratably to those creditors, who prove their debts, as the law provides, or as the court directs. Any balance remaining shall be distributed among the stockholders or their legal representatives in proportion to their interests.

See note to preceding section.

§ 27. Except where otherwise provided by statute, whenever at any meeting of its stockholders, legally called therefor, such stockholders vote to dissolve such corporation, a bill in equity against the same for dissolution thereof, may be filed by any officer, stockholder or creditor in the supreme judicial court, in the county in which it has an established place of business, or in which it held its last stockholders' meeting, upon which bill, such notice shall be given as may be ordered by any justice of said court, in term time or vacation, upon proof of which notice, such proceedings may be had according to the usual course of suits in equity, that said corporation shall be dissolved and terminated. Upon proof that there are no existing liabilities against said corporation, and no existing assets thereof, requiring distribution among the stockholders, said court may dissolve said cor-

Dividends; statements, etc.; liability of stockholders — R. S., Tit. iv, ch. xlv, §§ 28-37.

poration without the appointment of trustees or receivers.

§ 28. Said court has jurisdiction in said cause to appoint receivers, issue injunctions, and pass interlocutory decrees and orders, according to the usual course of proceedings in equity; and shall, moreover, upon dissolving said corporation, or upon terminating its charter, appoint one or more trustees, who shall have all the powers conferred upon similar trustees by sections twenty-four, twenty-five, twenty-six and forty-seven, or by any other law of the State, with such special powers as may be given them by said court. But, notwithstanding the appointment of such trustees, said court may superintend the collection and distribution of the assets of said corporation, and may retain said bill for that purpose.

[The legal authority of receivers is coextensive with the jurisdiction of the court appointing them. *Hunt v. Ins. Co.*, 55 Me. 290.]

§ 29. Nothing in the two preceding sections relieves any officer, shareholder or other person from any liability, except as provided therein.

§ 30. Cashiers of banks, and clerks or treasurers of other corporations shall ascertain the residences of all stockholders in either; and no dividend shall be paid to any stockholder, whose residence, for the time being, is not entered on the books thereof; and the cashiers of banks, and clerks or treasurers of all corporations holding property liable to be taxed, shall, by the eighth day of April annually, return under oath, to the assessors of each town, in which any of its stockholders reside, the names of such stockholders, the amount of stock owned by them on the first day of such April, and the amount of stock paid into such corporations, and such return shall contain in the body thereof, or by note annexed thereto an abstract of section thirty-two of chapter six; and such returns shall be the basis of taxation on such property.

When dividends may be made. Ch. 48, § 8.

[See *Starrett v. Ins. Co.*, 65 Me. 374.]

§ 31. (As amended March 4, 1855.) Such cashiers and clerks or treasurers shall, between the first day of November and the eighth day of December, annually, make return to the secretary of State, of the names of all stockholders, their residences, the amount of stock owned by each, and the whole amount of stock paid in, on said first day of November. The secretary shall lay the same before the legislature, within the first thirty days of the session.

[See *Starrett v. Ins. Co.*, 65 Me. 374.]

§ 32. A deposit of the return required in the two preceding sections in a post-office,

postage paid, properly directed, is a compliance therewith. For the neglect or refusal of its officer to make such return, the corporation forfeits five hundred dollars, to be recovered in an action of debt, half to the prosecutor and half to the State.

§ 33. Whenever any corporation or its officers neglect to make to the secretary of State any return required by law, the secretary of State shall forthwith notify the attorney-general, who shall proceed at once, by action of debt in the name of the State, to enforce the penalties therefor. In addition to said penalties, the following costs shall be recovered in behalf of the State against said corporation, to-wit: for the attorney-general, for the writ, an attorney fee, and travel and attendance at court not exceeding two terms; and for the State, such other costs as are legally taxable in actions at law. Such action may be brought in any county.

[Action against corporation to recover penalty for not making return of money of stockholders, etc., allegation that the "defendant corporation is, and for a long time has been a corporation duly organized, and existing under the laws of this State," does not sufficiently aver the material fact that any stock was ever issued. *State v. R. R. Co.*, 76 Me. 411.]

§ 34. If within thirty days from the commencement of the action under section thirty-two, such corporation makes to the secretary of State the returns required by law, he shall forthwith notify the attorney-general, who shall discontinue such suit upon payment of the costs already accrued.

§ 35. If any officer of a corporation, charged by law with the duty of making and causing to be published any statement in regard to such corporation, neglects so to do, such officer, in addition to penalties already provided, forfeits five hundred dollars, to the prosecutor, to be recovered by action of debt, or action on the case.

§ 36. The attorney-general, upon application by any corporation, and satisfactory proof that it has ceased to transact business, shall file a certificate of the fact with the secretary of State, and on payment of a reasonable compensation for his services, shall give a duplicate certificate to the corporation; and thereupon such corporation shall be excused from filing annual returns with the secretary of State, as now required by law, so long as its franchises remain unused.

§ 37. The stockholders of all corporations created by the legislature after February sixteen, eighteen hundred and thirty-six, except banking corporations, unless it is otherwise specified in their charter, or by general law, are liable for the debts of the corporation contracted during their ownership of such stock, prior to June one, eighteen hundred and fifty-seven, in case of deficiency of attachable corporate property, to the amount of their stock and no more;

and such liability continues, notwithstanding any subsequent transfer of such stock, for one year after such transfer is recorded on the corporation books; but no stockholder whose stock has been fully paid in, and no part of the principal has been withdrawn, is liable for debts contracted after said first day of June; but in the latter case, when an officer certifies on an execution against a corporation, that he cannot find corporate property to satisfy it, each stockholder's stock and interest in stock may be seized and sold thereon as on execution against him; and he may recover of the corporation the value of the stock or interest so taken as provided in section forty-nine.

Proceedings against stockholders by bill in equity. § 47. See § 38. Enforcement of liability. Ch. 86, § 36. Executors and administrators not liable. Act of 1897, at p. 37.

[Individual liability of stockholders. See Longley v. Little, 26 Me. 162; Grose v. Hilt, 36 id. 22; Wheeler v. Bank, 23 id. 308; Hathorn v. Calef, 53 id. 471; Came v. Brigham, 39 id. 35; Whitney v. Hammond, 44 id. 305; Milliken v. Whitehouse, 49 id. 527; Lovegrove v. Hunt, 58 id. 9; Poor v. Willoughby, 64 id. 379; Cummings v. Maxwell, 45 id. 190.

Stockholders are liable to creditor for an unsatisfied judgment, although he is assignee of the debt against it. Came v. Brigham, supra.

Stockholder liable only for amount of his stock without interest thereon. Cole v. Butler, 43 Me. 401. But judgment against him may include costs of suit. Grose v. Hilt, supra.

Power of stockholder to change existing laws as to liability of stockholders for debts of the corporation. Hathorn v. Calef, supra.

The right of creditor against individual stockholders does not vest until he recovers his judgment against them. Coffin v. Rich, 45 Me. 597; Carroll v. Hinkley, 46 Me. 81.

When corporate debt is settled by a negotiable note, which, when due, is taken up by another note, the date of second note is the time when indebtedness of corporation accrued so far as relates to liability of its stockholders. Milliken v. Whitehouse, supra.

Creditor must obtain judgment against the corporation before he can have his remedy against stockholders. Drinkwater v. Ry., 18 Me. 35; Longley v. Little, supra.

A judgment against a corporation is binding upon stockholders until reversed and is conclusive upon them in a subsequent action against them by plaintiff. Milliken v. Whitehouse, supra.

But such judgment is not conclusive evidence of organization and existence of the corporation. If denied these must be proved. Hudson v. Carman, 41 Me. 84.

Requisites of officer's return on execution against a corporation to allow proceedings against individual stockholders. Stanley v. Stanley, 26 Me. 191; Came v. Brigham, supra; Whitney v. Hammond, supra; Hathorn v. Calef, supra; Lovegrove v. Brown, 60 Me. 552; Grose v. Hilt, supra.

Cause of action against individual corporators does not accrue until failure to satisfy judgment from corporators' property, by due course of proceedings for that purpose. Longley v. Little, supra.

Such action may be commenced as soon as officer shall ascertain and certify upon the execution that he cannot find corporate property, and before return day of execution. Whitney v. Hammond, supra.

What notice is required to be given to stockholders by creditor of corporation before commencing action against him individually. Ingalls v. Cole, 47 Me. 530.

Fund arising from individual liability of stockholder belongs to whom? Id.; Cole v. Butler, 43 Me. 401.

Whether stockholder may settle, in good faith, with creditors without levy or suit brought, quære. Ingalls v. Cole, supra.

Defendant cannot protect himself by proof that he has paid to corporation the whole amount of his liability toward payment of corporate debts. Fowler v. Robinson, 31 Me. 189; Grose v. Hilt, supra.

Sale and transfer of stock does not exonerate stockholder from individual liability upon corporate debts contracted prior to such transfer. Fowler v. Ludwig, 34 Me. 455.

Where indebtedness of corporation exceeds its assets, and stockholders subscribe to agreement promising to liquidate the deficit, an action of assumpsit can be maintained against subscriber who fails to pay his portion. Haskell v. Oak, 75 Me. 519.

Individual liability of stockholder for debt of a corporation depends entirely upon express provisions of statute law. There being no contract, express or implied, between him and the plaintiff, the statute is to be strictly construed. Libby v. Tobey, 82 Me. 397; s. c., 19 Atl. Rep. 904.

Capital stock is a trust fund for payment of corporate debts. Appleton v. Turnbull, 84 Me. 72.

Unpaid stock is as much a part of the assets of a corporation as the money that has been paid in upon it. Id.

Stockholder held not liable to creditors because of non-assessable shares taken by another in good faith and assigned to him. Morgan v. Howlands, 36 Atl. Rep. 990.]

§ 38. The stockholders of corporations, excepting those created for literary, benevolent, and banking purposes, incorporated since March seventeen, eighteen hundred and thirty-one, are, as it regards debts of the corporation, subject to the liabilities imposed on stockholders by section thirty-seven, except for stock owned before April twenty-four, eighteen hundred and thirty-nine, and for stock held as executor, administrator, guardian or trustee.

§ 39. At any time within six months after the return of an execution against a corporation, recovered on a debt for which any stockholder is liable under section thirty-seven, unsatisfied in whole or in part for want of attachable property of the corporation, the plaintiff in such execution may make demand of any stockholder thereof to disclose, and show attachable property thereof sufficient to satisfy the execution.

See note to § 37.

§ 40. After demand as aforesaid, the execution creditor may have an action on the case against such stockholder, to recover of him individually the amount of his execution and costs, or the deficiency thereof, not exceeding the amount for which said stockholder is liable by section thirty-seven. Such action must be commenced within six months after the rendition of judgment against the corporation.

See note to § 37.

§ 41. In such action, said stockholder may prove, in reduction of his liability, the amount of corporate debt which he has

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previously paid, and which has not been repaid to him by the corporation; also any debt due him from the corporation, for which he, at the time, might maintain an action at law against it; and may show any other legal cause why judgment should not be rendered against him.

[A member of a corporation, as such, cannot make himself its creditor by the payment of its debts. *Blanchard v. Assn.*, 59 Me. 202.]

By virtue of above section, debts which a stockholder has against an insolvent corporation may be set off against a debt which he owes for unpaid stock, in a suit against him by an assignee of the insolvent corporation as well as when suit is brought by a judgment creditor. *Appleton v. Turnbull*, 84 Me. 72; s. c., 24 Atl. Rep. 392.]

§ 42. The treasurer of every such corporation shall keep a full record of all claims in favor of its stockholders against the corporation, and exhibit the same with a particular statement of its financial condition, to any creditor thereof, when requested by him, and on failure to exhibit such statement the stockholders shall not be entitled, in actions against them, to show previous payments on account of the corporation in reduction of their liability, but if they suffer damages by reason of being thus deprived of their defence, they have a remedy upon the bond of the treasurer.

§ 43. The clerk of every such corporation, on demand of an officer holding an execution against it, shall furnish him with the names, and, so far as known to him, the residences of every person liable thereon under this chapter, and the amount of his liability.

§ 44. (As amended March 6, 1885.) No stockholder in any corporation, except in banks, has, after February twenty-four, eighteen hundred and seventy-one, been liable for the debts of or claims against such corporation beyond any amounts withdrawn or not paid in, as provided in the two following sections; but neither this section nor the four following, affect past or future liabilities of any officer of any corporation; nor any liability of any person or corporation or remedy therefor, existing on said twenty-fourth day of February.

§ 45. The capital stock subscribed for any corporation is declared to be and stands for the security of all creditors thereof; and no payment upon any subscription to or agreement for the capital stock of any corporation, shall be deemed a payment within the purview of this chapter, unless bona fide made in cash, or in some other matter or thing at a bona fide and fair valuation thereof.

[To relieve stockholders from liability for stock subscribed, or agreed to be taken, payment therefor must be made bona fide in cash, or in some other matter or thing at a bona fide and fair valuation thereof. *Libby v. Tobey*, 82 Me. 397; s. c., 19 Atl. Rep. 904.]

Payment of stock in anything except money will not be regarded as payment, except to ex-

tent of true value of property received in lieu of money. *Id.*

When on payment of 60 per cent. of its par value, as many shares of new stock as they already have of old, are duly allotted to stockholders, the unpaid 40 per cent. is a part of assets of corporation, and "stands for the security of all creditors thereof" within meaning of above section. *McAvity v. P. & T. Co.*, 82 Me. 504; s. c., 20 Atl. Rep. 82.

When business of a corporation is to be closed up by insolvency proceedings, creditor thereof holding such new stock thus unpaid must pay in the balance and then take his percentage with other creditors. *Id.*]

§ 46. No dividend declared by any corporation from its capital stock or in violation of law, no withdrawal of any portion of such stock, directly or indirectly, no cancellation or surrender of any stock, and no transfer thereof in any form to the corporation which issued it, is valid as against any person who has a lawful and bona fide judgment against said corporation, based upon any claim in tort or contract or for any penalty, or as against any receivers, trustees or other persons appointed to close up the affairs of an insolvent corporation.

See ch. 48, § 8.

[A subscriber to capital stock of an unorganized business corporation has a right to withdraw, provided he exercises the right before corporation is organized and his subscription accepted. Such a subscription is not a completed contract. *Mill Co. v. Felt*, 87 Me. 234; s. c., 32 Atl. Rep. 888.]

§ 47. Any person having such judgment, or any such trustees, receivers or other persons appointed to close up the affairs of an insolvent corporation, may, within two years after their right of action herein given accrues, commence an action on the case or bill in equity, without demand or other previous formalities, against any person (if a bill in equity, jointly or severally, otherwise severally) who have subscribed for or agreed to take stock in said corporation and have not paid for the same; or who have received dividends declared from the capital stock, or in violation of law; or who have withdrawn any portion of the capital stock, or cancelled and surrendered any of their stock, and received any valuable consideration therefor from the corporation, except its own stock or obligation therefor; or who have transferred any of their stock to the corporation as collateral security or otherwise, and received any valuable consideration therefor as aforesaid; and in such action they may recover the amount of the capital stock so remaining unpaid or withdrawn, not exceeding the amounts of said judgments or the deficiency of the assets of such insolvent corporation. But no stockholder is liable for the debts of the corporation not contracted during his ownership of such unpaid stock, nor for any mortgage debt of said corporation; and no action for the recovery of the amounts hereinbefore mentioned shall be maintained against a

stockholder unless proceedings to obtain judgment against the corporation are commenced during the ownership of such stock, or within one year after its transfer by such stockholder is recorded on the corporation books.

[In an action by a judgment creditor of a corporation against a stockholder who has not fully paid for his stock, plaintiff must bring the case within the provisions of the two preceding sections. *Grindle v. Stone*, 78 Me. 176; s. c., 3 Atl. Rep. 183.

When judgment creditor of a corporation seeks to recover amount of such judgment, or any part thereof, from a stockholder who has not fully paid for his stock he must bring his case within provisions of the two foregoing sections. *Libby v. Tohey*, 82 Me. 397; s. c., 19 Atl. Rep. 904. And must show what? *Id.*

Above remedy exists only against those "who have subscribed for or agreed to take stock in said corporation and have not paid for the same." *Id.*

The statute contemplates a transaction or contract with the corporation in accepting, subscribing for, or agreeing to take stock; not one between individuals in the purchase of stock in open market. *Id.*

A purchaser of stock assessable on its face, or by charter or by-laws of corporation and payable by installments, is liable for amount remaining unpaid as if an original subscriber, chargeable with notice of any such unpaid balance, whether purchased of the corporation or in open market. *Id.*

Upon a creditor's bill against a stockholder to enforce payment of unpaid stock, ownership of stock may be proved by payment thereof although no written subscription is produced. *Baron v. Burrill*, 86 Me. 66; s. c., 29 Atl. Rep. 938. Certificates of stock are merely the usual evidence of proving ownership. *Id.*

Above section construed. *Id.*

In an action by judgment creditor of a corporation against stockholder, under above section, it should be alleged that the debt was not a mortgage debt of the corporation. Omission of such allegation leaves the declaration insufficient on demurrer. *Hight v. Quinn*, 86 Me. 494; s. c., 29 Atl. Rep. 1111.

An agreement of one corporation to pay a mortgage debt of another does not make it a mortgage debt of its own. Its own debt is not secured by mortgage. *Barron v. Paine*, 83 Me. 312; s. c., 22 Atl. Rep. 218.

A judgment regularly obtained against a corporation is conclusive evidence of its indebtedness in a suit by creditors against stockholders, unless it be shown that such judgment was procured by collusion or fraud. *Id.*

A stockholder in a business corporation is presumed to continue to be a stockholder until contrary is shown. *Id.*

Correctness of decision in *Burbank v. Gould*, 15 Me. 118, questioned. *Id.*

§ 48. A defendant in such suit may prove that he has already in good faith paid by himself or through another person who has assumed his stock or subscription, to any person holding a bona fide judgment, or to any such trustee or receiver, or other person authorized to receive it, or to the corporation itself, the whole or any part of any amounts for which he would be liable under this chapter; or that he has already in good faith and without collusion been sued for, and is still in peril of being compelled to pay, such amounts in whole or part, to some other person, in which latter case the suit

may be continued to await, on payment of defendant's costs from term to term; or he may prove that the amounts illegally received by him from said corporation were received more than two years before the claim arose on which such judgment was obtained, or if the suit is by trustees, receivers or other such person, more than two years before the commencement of the legal proceeding by virtue of which such corporation passed into the hands of trustees or receivers; or he may prove the invalidity of such judgment in any particular which could avail the corporation on a writ of error, or that said judgment was not bona fide; or he may prove that he has bona fide claims in contract or tort, several, or joint with other persons, against said corporation, absolute or contingent, or which could be availed of by set-off in court or on execution, for the whole or any part of the amounts for which he would be liable under this chapter; or in case his stock was transferred to such corporation as collateral security or as payment, he may either prove that the same was so transferred in good faith as security or payment for, or of, an anterior liability incurred without any concurrent agreement for the transfer of such stock, and for which the corporation was unable to obtain other sufficient security or payment, or in such case he may prove that whatever sum was received thereon, has been in whole or part repaid to such corporation; and proof of any of such matters is a full or partial defense for such defendant.

§ 49. When members of a corporation are liable for its debts, or for any acts of its officers or members, or to contribute for money paid on account of such debts or acts, the amount due may be recovered of such corporation by an action at law, or a bill in equity; and the court may make all necessary orders and decrees.

[A member of a corporation, as such, cannot make himself its creditor by the payment of its debts. *Blanchard v. Assn.*, 59 Me. 202.

See *Sampson v. Mill Corp.*, 36 Me. 78.]

§ 50. When an officer, having an execution against a corporation not created for purposes of education or religion, certifies thereon that he is unable to find personal property of the corporation, the creditor may cause so much of its real estate to be seized and sold at public auction, in the town where it lies, in the manner provided for the sale of real estate of banks, and subject to the same right of redemption, as is necessary to satisfy such execution and incidental charges.

Widow may demand dower. Ch. 103, § 17.

§ 51. Corporations, not created for literary, benevolent, or banking purposes, shall not



Creditors' actions — R. S., Tit. iv, ch. xlv, §§ 52-54; M'f'g corps.— Id., ch. xlviii, §§ 1, 2.

so divide any of their corporate property as to reduce their stock below its par value, until all debts are paid, and then only for the purpose of closing their concerns.

Illegal dividends prohibited. Ch. 48, § 8.

[See *Driscoll v. Co-operative Soc.*, 59 Me. 474.]

§ 52. When such a corporation has unlawfully made a division of any of its property, or has property which cannot be attached, or is not by law attachable, any judgment creditor may file a bill in equity in the supreme judicial court, setting forth the facts, and the names of such persons as are alleged to have possession of any such property, or choses in action, either before or after division; names of defendants may be struck out or added by leave of court; costs awarded at discretion, and service made on the defendants named, as in other equity suits. They shall in answer thereto, disclose on oath all facts within their knowledge relating to such property in their hands, or received by a division among stockholders. When either of them has the custody of the records of the corporation, he shall produce them and make extracts therefrom and annex them to his answer, as the court directs.

§ 53. The court shall determine, with or without a jury, whether the allegations in the bill are sustained, and it may decree, that any such property shall be paid to such creditor in satisfaction of his judgment, and cause such decree to be enforced as in other chancery cases. Any question arising may, at the election of either party, be submitted to the decision of a jury under the direction of the court.

§ 54. When a corporation is dissolved, its real and personal estate is vested in the persons who were at the time shareholders, as tenants in common according to their interests.

[A corporation may be dissolved in what ways. *Penobscot Boom v. Lamson*, 16 Me. 224; *Hodsdon v. Copeland*, id. 314.

A corporation is not dissolved by ceasing to exercise its powers. Nor because its stockholders and directors may consider it to be defunct. *Rollins v. Clay*, 33 Me. 132; *Proprs. v. Webb*, 66 id. 398.

Dissolution of a corporation in another State will not prevent an action commenced against it here from proceeding to judgment unless it be shown that the corporation is utterly extinct. *Hunt v. Ins. Co.*, 55 Me. 290.

Dissolution of a corporation by act of legislature deprives it of its corporate existence. *Merrill v. Bank*, 31 Me. 57.

Disposition of assets of dissolved corporation. *Buck v. Ins. Co.*, 68 Me. 532.

When a corporation, which, like mutual insurance companies, has no stockholders is dissolved, its personal property which remains after discharging its debts vests in the State. *Titcomb v. Ins. Co.*, 79 Me. 315; s. c., 9 Atl. Rep. 732.]

## CHAPTER XLVIII.

### Manufacturing Corporations. Organization under General Law.

#### *Manufacturing Corporations.*

- Sec. 1. Powers, liabilities and officers of manufacturing corporations.
2. Officers, when chosen; number of directors; president; treasurer to give bond; clerk to be sworn.
3. First meeting, how to be called; by-laws.
4. Capital to be fixed, divided into shares, and names of owners and their shares to be entered of record at first meeting; capital may be increased.
5. Certificates of stock to be issued, and are transferable.
6. Assessment may be made, and shares sold, for neglect to pay.
7. Notice of sale, how given; title of purchaser.
8. Dividends may be made, but not to reduce capital or debts due; penalty.
9. Names of directors and clerk, and schedule of property, to be furnished to any officer having writ against the company.
10. Officer, having an execution, may elect to take debts due the corporation; proceedings.
11. Person refusing to obey the two preceding sections, subject to penalty.
12. Books to be produced, upon a trial for a penalty.
13. Children under fifteen years of age not to be employed without proof of schooling; certificate of teacher, evidence.
14. Penalty for violation; superintending school committee to inquire, and county attorney to prosecute.
15. Persons under sixteen not to be employed over ten hours a day; penalty.

#### *Certain Corporations Organized under General Law.*

- Sec. 16. How three or more persons may organize themselves into a corporation for certain enumerated purposes; other corporations excepted.
17. First meeting, how called; amount of stock and number of officers.
18. Before doing business, officers to prepare a certificate of facts, to be examined and approved by attorney-general, and then recorded in registry of deeds and secretary of State's office; their pay.
19. Thereupon to be a corporation, subject to this chapter and chapter 46.
20. Such corporations may by majority vote increase stock and number of directors; limit; notice to secretary of State.

#### *Manufacturing Corporations.*

Section 1. Manufacturing corporations shall exercise the powers and be subject to the duties and liabilities contained in this chapter and in chapter forty-six, and in their charters. They shall have a president, directors, clerk, treasurer, and any other desirable officers.

Powers. See ch. 46, § 2, and note.

§ 2. Such officers shall be chosen annually, and shall continue in office until others are chosen and qualified in their stead. There shall not be less than three directors, one

## Manufacturing corporations — R. S., Tit. iv, ch. xlviii, §§ 3-5.

of whom shall be by them elected president. No director can hold such office after he ceases to be a stockholder. The treasurer shall give bond for the faithful discharge of his duties, in such sum, and with such sureties, as are required. The clerk shall be sworn, and shall record all votes of the corporation in a book kept for that purpose.

Failure to elect officers, effect. Ch. 46, § 8. Personal liability of officers. Ch. 46, §§ 29, 35; Ch. 48, § 8. Officers issuing false certificates of stock, penalty. Ch. 121, § 10. See Ch. 46 (4), note.

[Notice of annual meeting for election of officers to contain what. *Sampson v. Mill Corp.*, 36 Me. 78.]

Where there is nothing in by-laws of corporation or laws of the State to limit the term of the officer, he remains in office until his successor is chosen. *Dam Co. v. Gray*, 30 Me. 547.

Treasurer of corporation, who purchases stock in its behalf, does not render himself personally liable to pay therefor; aliter, if he acts for himself, though purporting to act as its agent. *Haynes v. Hunnewell*, 42 Me. 276.

Treasurer cannot be charged as trustee of the corporation, for funds held by him in his official capacity. *Bowker v. Hill*, 60 Me. 172.

As a general rule, a corporation is not responsible for unauthorized or unlawful acts of its officers. *Mitchell v. Rockland*, 41 Me. 363.

Acceptance of a draft by treasurer, without evidence of authority, does not render the corporation liable thereon. *Atkinson v. Mfg. Co.*, 24 Me. 171.

General power given by directors to president to have full control of the business authorizes him to purchase materials, borrow money, and give note of a corporation for borrowed money. *Castle v. Foundry Co.*, 72 Me. 177.

Acts of de facto officers binding upon third parties. *Simpson v. Garland*, 76 Me. 203.

Notice to officers, when not binding on corporation. *Bank v. Chase*, 72 Me. 226.

Treasurer of a corporation is not its trustee with respect to its funds. He is a mere depositor of the money. *Taylor v. Taylor*, 74 Me. 582.

The law raises no implied promise to pay president of private corporation for official services; and a by-law providing that directors shall fix compensation will not entitle him to recover for such services until directors take the necessary action; nor then, if they do not act before corporation is adjudged insolvent. *McAvity v. P. & P. Co.*, 82 Me. 591; s. c., 20 Atl. Rep. 82.

Evidence that a particular person was once chosen treasurer, and has continued to act as such, held sufficient evidence that he is still treasurer as to third parties. *Mason v. Belfast Hotel Co.*, 36 Atl. Rep. 624.

Creditors may hold the company's agent liable for wasting assets, on the ground that it constitutes a misapplication of trust funds. In re *Brookway Mfg. Co.*, 35 Atl. Rep. 1012.

A treasurer who used corporate funds to pay for stock of the corporation purchased by him and other stockholders for themselves, with the consent of all the stockholders and directors, was liable for the fund. 10.

Where directors have power to bind corporation by their contracts, that power may be exercised only by a majority. *Trott v. Warren*, 11 Me. 227; *Cram v. Bangor House*, 12 id. 254.

Any verbal order or direction concurred in by majority of directors will be binding on corporation, though not entered on records. 1d. Directors have authority, in behalf of corporation, to release person whom they prepared to call as a witness. *Lewis v. Bank*, 32 Me. 96.

Unless specially empowered, directors have no authority to sell any part of corporate estate essential to its necessary business. *Rollins v. Clay*, 22 Me. 152. Nor to make donations from, or misappropriate corporate funds in violation of

law and its regulations. *Bank v. Johnson*, 24 Me. 490.

Directors cannot delegate their powers in case of sale of shares for default in payment of assessments. *R. R. Co. v. Ritchie*, 40 Me. 425.

Directors and managers of a corporation are trustees, holding fiduciary relation to stockholders, and cannot be permitted to acquire interests adverse to such relation. *Ry. Co. v. Poor*, 59 Me. 277. Thus, directors cannot derive pecuniary benefit from contracts of a corporation. 1d.

For official misconduct and fraudulent discharge of duties of directors, they are responsible to the corporation. *Smith v. Poor*, 40 Me. 415. Remedy of individual who has suffered damage through such misconduct is against company and not against the offenders. 1d.

Directors hold corporate property under implied or constructive trusts for benefit of creditors. *Baxter v. Moses*, 77 Me. 465; s. c., 1 Atl. Rep. 359.

It is the duty of director to know the condition of corporation, and he cannot avail himself of any dereliction of such duty to secure a personal advantage over other creditors of the corporation. *Clay v. Towle*, 78 Me. 86; s. c., 2 Atl. Rep. 852.

Purchase by director of a railroad of land upon which he anticipates the track or buildings may be located, cannot necessarily be construed to have been made in trust for company. *R. R. Co. v. Stubbs*, 77 Me. 591; s. c., 2 Atl. Rep. 9.

Directors cannot sell all the property and business of the corporation under the guise of a sale of their stock, and receive the entire proceeds to their private use. *Cusick v. Bartlett*, 39 Atl. Rep. 497.]

§ 3. The first meeting may be called by a majority of the persons named in the act, in the manner prescribed in section three, of chapter forty-six, giving fourteen days' notice thereof. By-laws may be made and enforced as provided in section six of that chapter.

See ch. 46, § 3.

[Organization of corporation not defective because notice of first meeting is not certified upon each corporation in accordance with law, when it appears that the corporate powers have been assumed by the persons by whom it was intended they should be enjoyed. *McClinch v. Sturgis*, 72 Me. 288.]

§ 4. The capital shall be fixed within the limits of the charter and divided into shares; and the names of owners, and the number of shares owned by each, shall be entered of record at its first meeting. The capital may be subsequently increased to the amount allowed by its charter, by adding to the number of shares.

See ch. 46, § 12, and notes. Stockholders' liability. See ch. 46, §§ 37-54.

[Where charter requires notice of time and place for opening books of subscription to be given under direction of persons named in its first section, majority of the persons thus named may lawfully give such notice. *R. R. Co. v. White*, 41 Me. 512.]

§ 5. Certificates, stating the number of shares owned by them, signed by the treasurer, with the seal of the corporation affixed, shall be furnished to the stockholders. They are transferable, as provided in section twelve of chapter forty-six.

See ch. 46, § 12, and notes.

§ 6 Assessments not exceeding the amount originally limited for a share may be made on all the shares to be paid to the treasurer, on such installments and at such times as are ordered. If a stockholder neglects to pay such assessments on his shares for thirty days after they are made, at public auction a sufficient number of them to pay the same with incidental charges.

[Corporation cannot recover from stockholder for its shares or assessments if it has not given notice. *R. R. Co. v. Kendall*, 34 Me. 439.]

Upon a subscription, promise to take and pay for shares, assessments may be maintained, although corporation has not exercised its chartered authority to suspend the delinquency of payment. *R. R. Co. v. Jones*, 34 Me. 530.

The right acquired by taking shares, so as to entitle consideration for a payment on such shares and pay for them. *R. R. Co. v. Jones*, supra. So is the agreement to assume liability under an act to accomplish the purposes of a corporation. *R. R. Co. v. Palmer*, 34 Me. 565.

An agreement to take and pay for a given number of shares in a corporation is equivalent to the promise to take and pay for such shares. *R. R. Co. v. Irish*, 30 Me. 44; *R. R. Co. v. Dunn*, 40 Me. 187; *R. R. Co. v. Dunbar*, 40 id. 142; *R. R. Co. v. Pratt*, id. 447.

An agreement in writing to subscribe a specified number of shares to the stock of a corporation is not an express promise to pay for them. *R. R. Co. v. Kendall*, supra.

A written agreement to take and secure a certain number of shares in an insurance company before its organization is only a proposal to take that number of shares. *Starrett v. Rockland Co.*, 65 Me. 374; *M. L. R. Co. v. Carroll*, 63 id. 185; *Same v. Moore*, 60 id. 261.

The return of the name of such a subscriber to the secretary of State as a stockholder by the secretary of the company, under a mistake of fact, and the entry of it upon the stock ledger, do not constitute an acceptance of the proposal. *Starrett v. Rockland Co.*, supra.

Not necessary to fix capital stock to enable corporation to maintain action on subscription agreement. *R. R. Co. v. Beck*, 65 Me. 536.

No other demand for payment of assessments to maintain an action is necessary than that prescribed in by-laws of the corporation. *R. R. Co. v. Dunmer*, supra.

A conditional subscription to stock held to be valid and to constitute a part of the amount of subscriptions required as a condition precedent to bind their subscribers. *R. R. Co. v. Beck*, supra.

Where charter requires capital stock to consist of not less than given number of shares, no assessment must be made upon subscription before required number is taken, neither will the subscribers be binding. *R. R. Co. v. Veazie*, 30 Me. 541; *R. R. Co. v. Dunmer*, supra.

Alteration of charter requiring a less amount of capital stock, whereby amount required is satisfied for, cannot make previous subscribers liable as shareholders, who are not such before the alteration. *R. R. v. Veazie*, supra.

Where amount of stock is not fixed in charter and corporation has voted what amount should be subscribed. It is not a prerequisite to the valid assessment upon shares of a member that the whole of that amount should be subscribed to, although his subscription was made after the vote was passed. *R. R. Co. v. Jarvis*, 34 Me. 560.

Subscription for stock on conditions made by subscriber, afterward repudiated by him, is invalid, though accepted by the corporation. *R. R. Co. v. Veazie*, supra.

Where condition of subscription was that not more than five dollars on a share should be assessed at one time, and two or more assessments were made at same time, but payment was to

be made in installments, and stockholder assessed at one time, he is not bound to pay. *R. R. Co. v. Jones*, supra.

When stockholder has paid assessments on shares, he is not bound to pay assessments on shares of the same corporation, if he has not subscribed to them. *R. R. Co. v. Jones*, supra.

Assessments on shares of one corporation do not bind stockholder of another corporation, if he has not subscribed to them. *R. R. Co. v. Jones*, supra.

Stockholder of one corporation is not bound to pay assessments on shares of another corporation, if he has not subscribed to them. *R. R. Co. v. Jones*, supra.

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## Manufacturing corporations; assessments — R. S., Tit. iv, ch. xlviii, §§ 7-14.

Unconditional subscription to take and pay for certain number of shares at par value is binding, even though amount of capital stock was not fixed, and minimum number of shares named in charter were not subscribed for. *R. R. Co. v. Kinsman*, 77 Me. 370.

When subscriber to stock cannot be held to his subscription. *Steamboat Co. v. Sewall*, 80 Me. 400; s. c., 14 Atl. Rep. 939; *Same v. Same*, 78 Me. 167; s. c., 3 Atl. Rep. 181.

When he may be held thereon. *R. R. Co. v. Kinsman*, supra; *Webber v. Dunn*, 71 Me. 331.

A subscriber to capital stock of an unorganized corporation has a right to withdraw, provided he exercises the right before the corporation is organized and his subscription accepted. *Bryant v. Felt*, 87 Me. 234; s. c., 32 Atl. Rep. 888.

Sale of the entire property and business of a corporation held a defense to an action on an unpaid subscription. *Cusick v. Bartlett*, 39 Atl. Rep. 497.]

§ 7. The treasurer, before the sale, shall give notice of the time and place thereof, and of the amount due on each share, in a newspaper printed in the town, if any, if not, in the county where the manufactory is established, otherwise in the State paper, three weeks successively; and the treasurer's certificate of the sale of such shares, recorded as other transfers, passes the title to the purchaser.

§ 8. Dividends of profit may be made by the directors, but the capital or the debts due shall not thereby be reduced, until all debts due from the corporation are paid. Any officer or member, who votes or aids to make a dividend in violation hereof shall be fined not exceeding two thousand dollars, and imprisoned less than one year; and all sums received for such dividends may be recovered by any creditor of the corporation in an action on the case.

See ch. 46, §§ 15, 46, 51, 52, 53. See Act of 1885, at p. 29.

[Funds of a corporation, whenever earned, are to be divided among those who are stockholders when a dividend is declared. *Goodwin v. Hardy*, 57 Me. 143; *Hagar v. Bank*, 63 id. 509. A corporation has the right to hold a cash dividend, as pledge for indebtedness of shareholder to it. *Id.* A dividend declared on shares under attachment are subject to the lien. *Id.*

When a dividend is declared out of profits and earnings, payable in money, it belongs to person holding the stock at time of such declaration, whether holder be a life tenant or remainderman, regardless of the source of such profits and earnings, the time when earned or the size of the dividends. *Richardson v. Richardson*, 75 Me. 570.

One who is entitled to the "net annual income" of stock can rightfully claim what? *Gilkey v. Paine*, 80 Me. 319; s. c., 14 Atl. Rep. 205.

Preferred stockholders take their shares upon conditions regarding dividends named in a by-law as a contract between themselves and the corporation. *R. R. Co. v. Belfast*, 77 Me. 445; s. c., 1 Atl. Rep. 362.

Preferred stockholder is not a creditor, nor is a dividend guaranteed to him. Deficiency of dividend for one year is not to be made up from net earnings of another year. *Id.*

The term "net earnings" means such as are applicable to dividends, and these would be gross receipts and less interest on company's indebtedness and in floating liabilities, and less also an annual contribution to a sinking fund. *Id.*

As a rule officers of a corporation are sole judges of propriety of declaring dividends, unless they act

illegally, wantonly or oppressively. When right to dividend is acquired a court of equity will compel company to declare it. *Id.*

Directors are not justified in refusing to declare dividends to preferred stockholders merely because corporation cannot pay all its funded mortgage indebtedness at maturity if dividends be paid; other conditions are to be considered. *Hazeltine v. R. R. Co.*, 79 Me. 411.]

§ 9. Every agent or person having charge of corporate property, shall, on request, furnish to any officer having a writ or execution against the corporation for service, the names of the directors and clerk, and a schedule of all property, including debts known by him to belong to the corporation.

§ 10. An officer, having an execution against such a corporation and unable to find property liable to seizure, or the creditor, may elect to satisfy it, in whole or in part, by a debt due to the corporation not exceeding the amount due to the creditor, and the person having custody of the evidence of such debt shall deliver it to such officer with a written transfer thereof to him for the use of the creditor, which shall constitute an assignment thereof, and the creditor, in the name of the corporation, may sue for and collect it, subject to any equitable set-off by the debtor.

§ 11. Any officer or other person, who unnecessarily neglects or refuses to comply with the two preceding sections, forfeits not exceeding four times the amount due on such execution, and may be imprisoned less than one year.

§ 12. When a suit or prosecution is pending for a violation of any provision hereof, the clerk or person having custody of the books of the corporation, shall, upon reasonable written notice, produce them on trial; and for neglect or refusal so to do, he is liable to the same fine or imprisonment as the party on trial would be.

§ 13. No child shall be employed or suffered to work in a cotton or woolen manufactory without having attended a public school, or a private school taught by a person qualified to be a public teacher; if under twelve years of age, for four months, if over twelve and under fifteen, for three months, of the year preceding such employment. A certificate under oath of such teacher, filed with the clerk or agent before employment, is the proof of such schooling.

An Act (1887) providing for fortnightly payment of wages. See p. 30.

§ 14. Any owner, agent or superintendent of such manufactory, for each violation of the preceding section, forfeits one hundred dollars, to be recovered by indictment, half to the prosecutor and half to the town where the offense was committed, to be added to its school money. Superintending school committees shall inquire into such violations, and report them to the county attorney, who shall prosecute therefor.

§ 15. No person under the age of sixteen years shall be employed by any corporation for more than ten hours of a day. Whoever violates this provision forfeits one hundred dollars, half to the town where the offense is committed, and half to the person employed; to be recovered by indictment.

#### Certain Corporations Organized under General Laws.

§ 16. Three or more persons may associate themselves together by written articles of agreement, for the purpose of forming a corporation to carry on any lawful business, including corporations for manufacturing, mechanical, mining or quarrying business and also corporations whose purpose is the carriage of passengers or freight, or both, upon the high seas, or from port or ports in this State to a foreign port or ports, or to a port or ports in other States, or the carriage of freight or passengers, or both, upon any waters where such corporations may navigate; and excepting corporations for banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive profit from the loan or use of money, and safe deposit companies, including the renting of safes in burglar-proof and fire-proof vaults; also excepting telegraph and telephone companies.

Corporations must be formed under general laws. Const., art. IV, § 14. Acts of incorporation are public acts. Ch. 1, § 6. An act relating to record of changes in organization. See p. 29. To payment of wages. See p. 30. To corporations especially chartered. See p. 36. To change of location of corporation organized under above section. See p. 36. To organization. See p. 37.

[The doings of persons attempting to organize become void and of no effect unless the certificate of attorney-general has been obtained. *Assn. v. Clarke*, 61 Me. 351.]

The members of a corporation are legally presumed to be citizens of the State by the laws of which it was created and in which alone it has a legal existence. *Hobbs v. Ins. Co.*, 56 Me. 417.

A lumber company organized under above section, as a manufacturing corporation, is not a railroad company because it constructs a railroad on its own land to facilitate its lumbering operations. *Palangio v. Lumber Co.*, 86 Me. 315; s. c., 29 Atl. Rep. 1087.

Quasi public corporations cannot sell or lease their corporate powers and privileges, and thereby disable themselves from performing public duties, without legislative authority. *Gas Light Co. v. G. F. & L. Co.*, 85 Me. 532; s. c., 27 Atl. Rep. 103. A serious objection to traffic in corporate franchises is the ease with which such a power could be used to create monopolies. *Id.*

Chapter 102, Laws 1895, provides for organization of gas and electric companies under this act.]

§ 17. (As amended March 25, 1891.) Their first meeting shall be called by one or more of the signers of said articles, by giving

notice thereof, stating the time, place and purposes of the meeting to each signer, in writing, or by publishing it in some newspaper printed in the county, at least fourteen days prior to the time appointed therefor. At such meeting they may organize into a corporation, adopt a corporate name, define the purposes of the corporation, fix the amount of the capital stock, which shall not be less than one thousand, nor more than ten million dollars, divided into shares, and elect a president, not less than three directors, a clerk, treasurer, and any other necessary officers, and may adopt a code of by-laws.

See ch. 46, § 3; ch. 48, § 3.

§ 18. (As amended by L. 1895, ch. 89, and L. 1897, ch. 225.) Before commencing business, the president, treasurer, and a majority of the directors shall prepare a certificate setting forth the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, and the number and names of the directors, and the name and residence of the clerk, and shall sign and make oath to it; and after it has been examined by the attorney-general, and been by him certified to be properly drawn and signed and to be conformable to the Constitution and laws, it shall be recorded in the registry of deeds in the county where said corporation is located, in a book kept for that purpose, and within sixty days after the day of the meeting at which such corporation is organized, a copy thereof certified by such register shall be filed in the secretary of State's office, who shall enter the date of filing thereon, and on the original certificate to be kept by the corporation, and shall record said copy in a book kept for that purpose. Such corporation shall pay the attorney-general and secretary of State five dollars each for their services, in advance; and before said certificate is filed in the office of the secretary of State, when the amount of the capital stock does not exceed ten thousand dollars, it shall also pay to the treasurer of State for the use of the State the sum of ten dollars; when the amount of the capital stock exceeds ten thousand dollars and does not exceed five hundred thousand dollars, it shall pay to the treasurer of State for the use of the State, the sum of fifty dollars; when the amount of the capital stock exceeds five hundred thousand dollars, it shall pay to the treasurer of State for the use of the State ten dollars for each one hundred thousand dollars of the capital stock; and the treasurer's receipt for said sum shall be filed with the secretary of State as a condition precedent, before he

Increase of capital — R. S., Tit. iv, ch. xlviii, §§ 19, 20; insolvent — Id., Tit. vi, ch. lxx, § 61.

shall be authorized to receive said certificate for filing.

See note to next section.

[Any corporation heretofore organized under said chapter 48, which caused the certificate to be recorded in the registry of deeds of the county in which such corporation is described in said certificate to be located, shall be deemed to have complied with the requirements of section 18 of said chapter 48 relating to recording said certificate. Acts of 1893, ch. 212.]

[The doctrine of waiver on the part of the State of breach of a condition precedent to exercise of corporate functions is not applicable when, by terms of charter, the franchise absolutely determines upon failure to perform such conditions. *State v. Bridge Corp.*, 85 Me. 18; s. c., 26 Atl. Rep. 947.

In a proceeding against a corporation there may be judgment of ouster of the particular franchise, and not the whole charter. *Id.*]

§ 19. From the time of filing such certificate in the secretary of State's office, the signers of said articles and their successors and assigns shall be a corporation, the same as if incorporated by a special act, with all the rights and powers, and subject to all the duties, obligations and liabilities provided by this chapter and chapter forty-six.

[Unless the certificate of the attorney-general be obtained as required by statute, persons associating themselves together under provisions of this chapter do not become a corporation. *Factory Assn. v. Clarke*, 61 Me. 351.

Manufacturing corporations, created under provisions of this chapter, stand on an equality with those "incorporated by special act" as to rights and powers conferred and as to duties, obligations and liabilities imposed by chapter 46. *Poor v. Willoughby*, 64 Me. 379.

Above section cited. *Car Co. v. Cook*, 70 Me. 146.]

§ 20. (As amended March 15, 1893.) If the stockholders of any corporation created by special charter and not charged with the performance of any public duty, or organized under the general laws of the State, find that the amount of its capital stock is insufficient for the purposes for which said corporation is organized, or that the number of directors is inconvenient for the transaction of its business, the stockholders may by a vote representing a majority of the stock issued, increase the amount of its capital stock to any amount not exceeding ten million dollars, and may change the number of their directors in like manner, and the corporation shall file a certificate thereof with the secretary of State within ten days thereafter, and thereupon said vote shall take effect. When the capital stock is increased from ten thousand dollars or less to not exceeding five hundred thousand dollars, the corporation shall pay to the treasurer of State for the use of the State the sum of forty dollars. When the capital stock is increased to any amount exceeding five hundred thousand dollars, it shall pay to the treasurer of State for the use of the

State, the sum of ten dollars for each one hundred thousand dollars of such increase, and the treasurer's receipt for same shall be filed with the secretary of State, before he shall be authorized to receive any certificate of an increase of capital stock.

See note to preceding section.

## TITLE VI. COURTS OF PROBATE.

### CHAPTER LXX.

#### The Insolvent Law.

Sec. 61. This chapter applies to corporations; exceptions; proceedings; but no discharge shall be granted nor stockholders' liability affected.

§ 61. This chapter (the Insolvent Law) applies to all corporations created by the law of the State, carrying on manufacturing, trading, mining, building, insurance or other private business, but does not apply to corporations engaged in business involving public duties and obligations, among which are railroads, banks, corporations engaged in supplying cities and towns with gas or water, and other corporations of like character; and upon petition of any officer authorized by legal vote of such corporation, passed at a legal meeting called for that purpose, or upon petition of any creditor or creditors of such corporation, made and presented as in this chapter is provided in the case of an individual debtor, and upon such notice as the judge orders, a hearing shall be had upon such petition, and if it appears that such corporation is insolvent, and that such facts exist as would authorize the judge to issue a warrant against the estate of an individual debtor, such corporations shall be adjudged insolvent, and a warrant shall issue against its property and effects, as hereinbefore provided; and all the provisions of this chapter relating to proceedings subsequent to the issuing of a warrant against the estate of an individual debtor, apply to said corporation and the disposal of its effects and estate, but no discharge shall be granted to such corporation, and nothing in this chapter affects the liability of any stockholder in such corporation as is now provided by law.

Court may appoint receiver. Ch. 46, § 28. Personal liability of stockholders of insolvent corporation. Ch. 46, §§ 37 et seq.

[Corporations engaged in business involving public duties and obligations, including gas and water companies, are expressly exempted by statute from operation of the Insolvent Law. *Edison Co. v. E. & P. Co.*, 82 Me. 464; s. c., 19 Atl. Rep. 599. An electric light and power company, organized under general laws of the State, is such a corporation. *Id.* Whether use is a public one by reason of exercise of right of eminent domain, how determined. *Id.*]

Execution — R. S., Tit. 7, ch. 76, §§ 43-45; actions, etc. — Id., tit. 9, ch. 81, §§ 2, 13, 15, 19.

## TITLE VII. TITLES TO PROPERTY.

### CHAPTER LXXXVI.

#### Title to Real Estate by Levy of Execution.

Sec. 43. Lands of banks and manufacturing corporations, and their titles as mortgagees, may be sold at auction; proceedings.

44. No transfer of such property made after notice of seizure, is valid.

45. Corporations may redeem, and their equity may be attached and sold.

§ 43. The lands of banks or manufacturing corporations, and their titles as mortgagees of lands, may be seized on execution and sold at auction. The officer shall give notice of the time and place of sale fourteen days previous thereto, by posting it in two or more public places in the town where the lands lie, and by publication in a newspaper printed in the county, if any, otherwise in the State paper; and he may by deed convey the same, and a debt secured by such mortgage and remaining unpaid will pass with the mortgagee's title to the purchaser, who may recover the premises or debt in his own name. In such action, a copy of the mortgage, attested by the register of deeds, is prima facie evidence of such deed, and of the contracts secured by it, as remaining due at the time of trial. The cashier of the bank or clerk of the corporation, on reasonable request of the officer, shall furnish him with a certified copy of such contract, and of all payments made thereon.

See ch. 46, § 2 (6).

§ 44. No transfer of such mortgage, or the debt secured thereby, made by such corporation after notice of the seizure thereof on execution has been filed in the registry where the land lies, or given to the party to be affected thereby, has any validity against the purchaser at such sale.

§ 45. The corporation may redeem such land, or mortgage and debt, as is provided for the redemption of lands levied on by appraisement; and such right may be attached and sold on execution as the right to redeem from the sale of an equity of redemption may be, and the corporation has the like right to redeem from such second sale.

## TITLE IX. CIVIL RIGHTS AND REMEDIES.

### CHAPTER LXXXI.

#### Commencement of Civil Actions.

Sec. 2. Actions, how commenced.  
13. Venue of actions.  
15. Certain actions in behalf of the State may be brought in any county.  
19. Service on corporation, how made.  
20. Service on domestic corporation, when no officer can be found.  
22. Service on foreign insurance and express companies, how made.

Sec. 27. How shares in a corporation may be attached.

28. Franchises and other property of the corporation, how attached.

74. Certificates of proceedings to be filed with officer of corporation.

104. Foreign corporation entitled to process relating to limitation of actions.

§ 2. All civil actions, except scire facias and other special writs, shall be commenced by original writs; \* \* \* and in actions against corporations \* \* \* the writ and summons may be combined in one \* \* \*.

Corporation may sue and be sued. Ch. 46, § 2 (f), and notes.

§ 13. Local and transitory actions shall be commenced and tried as follows: \* \* \* when a corporation is one party and a county the other, in any adjoining county; \* \* \* when one party is a town, parish, or school district, and the other some corporation or natural person, in the county in which either of the parties is situated or lives; \* \* \* all other corporations may sue and be sued in the county in which they have an established place of business, or in which the plaintiff or defendant, if a natural person, lives.

See note to ch. 46, § 2 (1).

[Special provision in an act incorporating an insurance company held not to affect requirements of this section. *Martin v. Ins. Co.*, 53 Me. 419.

Wrong venue of local actions, how taken advantage of. *Haskell v. Woolwich*, 58 Me. 535.]

§ 15. An action in behalf of the State to enforce the collection of State taxes upon any corporation, or to recover of any person or corporation moneys due the State, public funds or property belonging to the State, or the value thereof, may be brought in any county; Provided, That on motion of the defendant, any justice of the supreme judicial court, holding the term at which such action is returnable, may, for sufficient reasons shown, remove the same to the docket of said court in any other county for trial, and may upon such removal, award costs to the defendant for one term, to be paid by the treasurer of State on presentation of the certificate of the amount thereof, from the clerk of the court of the county from which said action is transferred.

§ 19. In suits against a county, the summons shall be served by leaving an attested copy thereof with, etc., \* \* \* and against any other corporation, however created, with its president, clerk, cashier, treasurer, general agent, or director; if there is no such officer or agent found within the county where such corporation is established, or where its records or papers are by law required to be kept, with any member thereof; and in all suits and proceedings at law or in equity against any foreign or

Actions; service of summons — R. S., Tit. ix, ch. lxxxi, §§ 20, 22, 27, 28, 74, 104.

alien company or corporation established by the laws of any other State or country, and having a place of business within this State or doing business herein, service of the writ, bill, petition, or other process is sufficient, if made by leaving an attested copy thereof with the president, clerk, cashier, treasurer, agent, director, or attorney of such company or corporation, or by leaving such copy at the office or place of business of such company or corporation within this State; and in each case, it shall be so served thirty days before the return day thereof.

Service on foreign corporations. §§ 22, 104, post; Act of 1897, at p. 37.

[Service upon a manufacturing corporation by leaving copy with its clerk thirty days prior to day of sitting of the court, is good. *Hinekey v. Granite Co.*, 16 Me. 370.

Service at last and usual abode of treasurer or other proper officer of railroad company, held good. *Harris v. R. R. Co.*, 47 Me. 298.

Above section cited. *Walker v. Tewksbury*, 67 Me. 496.

Plea in abatement for want of sufficient service on a corporation, held not sufficient. *Perry v. Ry. Co.*, 71 Me. 359.]

§ 20. When no officer, general agent, or member of a domestic corporation, can be found in the county in which the same is located, or in the county in which its last certificate of election of clerk was filed, the officer having in his hands any process for service on such corporation, may file a copy thereof, in the registry of deeds of the county in which such corporation was located, or in which its last certificate of election of clerk was filed, and make return of his doings, which service is sufficient to hold said corporation to answer to such process.

§ 22. In actions by inhabitants of this State against insurance companies established by any other State or country, on policies of insurance, signed or countersigned by agents in this State, on property or lives, or against accidents in this State; and in such actions against express companies so established, service is sufficient if made on the person who signed or countersigned such policies, or on any agent or attorney of either such company, or if left at his last and usual place of abode thirty days before the return day of the suit; but the court may, in any case, order further notice.

See § 104; Act of 1897, at p. 37.

§ 27. When the share or interest of any person in an incorporated company is attached on mesne process, an attested copy of the writ with a notice thereon of the attachment, signed by the officer, shall be left with the clerk, cashier or treasurer of the company; and such attachment is a lien on such share or interest, and on all accruing

dividends; and if the officer having the writ exhibits it to the officer of the company having custody of the account of shares or interest of the stockholders, and request a certificate of the number held by the defendant, and such company officer unreasonably refuses to give it, or willfully gives him a false certificate thereof, he shall pay double the damage occasioned by such refusal or neglect; to be recovered against him in an action on the case by the creditor.

[Attachment under this section held good. *Hagar v. Bank*, 63 Me. 514.]

§ 28. The franchise and all right to demand and take toll, and all other property of a corporation, may be attached on mesne process, and the attaching officer shall leave an attested copy of the writ with a notice of the attachment thereon, signed by him, with the clerk, treasurer, or some officer or member of the corporation, as provided in section nineteen.

[Section applied. *Benson v. Smith*, 42 Me. 425.]

§ 74. \* \* \* When the property attached is stock in a banking or other corporation, or is such that the attachment must be recorded in the town clerk's office, such copy and certificate shall be filed with the officer of such corporation or with the town clerk with whom the attachment is filed; and thereby the attachment is vacated.

§ 104. (Enacted February 5, 1889.) Any foreign corporation doing business continuously in this State, and having constantly an officer or agent resident herein, on whom service of any process may be made, shall be entitled to the benefit of all provisions of law relating to limitation of actions the same as domestic corporations.

See ch. 46, § 22; ch. 81, § 22; Act of 1897, at p. 37.

## CHAPTER LXXXII.

### Proceedings in Civil Actions.

Sec. 16. Treasurers of corporations may sue in their own names, when.

133. Costs for travel in actions by corporations.

§ 16. Treasurers of \* \* \* corporations, may maintain suits in their own names as treasurers on contracts given to them or their predecessors, and prosecute suits pending in the name of their predecessors.

§ 133. In actions of a corporation, its travel is computed from the place where it is situated, if local, otherwise from the place where its business is usually transacted, not exceeding forty miles, unless its agent actually travels a greater distance to attend court.



Levy on shares of stock — R. S., Tit. ix, ch. lxxxiv, §§ 12-21.

## CHAPTER LXXXIV.

### Levy of Execution on Personal Property.

- Sec. 12.** Shares in incorporated companies, how to be sold.
13. Notice of seizure of, how to be given, if not attached; and how if attached.
  14. Officers of corporations shall certify number of debtor's shares; penalty.
  15. Shares sold shall be transferred; new certificate to buyer; dividends.
  16. Notice of sale, how to be given.
  17. Franchise of corporation, how to be sold; notice of sale of, how to be given.
  18. Mode of sale; possession, what, and how to be given to the purchaser.
  19. Rights and duties of the purchaser.
  20. Rights of redemption by the corporation.
  21. Franchises of railroads wholly within the State, notice of sale of, how to be given in each county interested; conveyance by sheriff's deed.
  23. Notice of second attachment shall be given to the first attaching officer.

§ 12. Any share or interest of a stockholder or proprietor in an incorporated company, may be taken on execution and sold in the following manner, and not otherwise, anything in the charter of such company to the contrary notwithstanding.

§ 13. If the property was not attached on mesne process in the same suit, the officer shall leave a copy of the execution with the treasurer, cashier, clerk, or other recording officer of the company, and the property shall be considered as seized on execution when the copy is so left. If it was so attached and remains attached, the officer shall proceed in seizing and selling it on execution as in section sixteen.

§ 14. The officer of the company having the care of the records or account of shares, or interest of the stockholders, shall, on exhibition to him of the execution, give the officer holding it a certificate of the number of shares held by the judgment debtor, or of the amount of his interest, under the penalty provided in section twenty-seven of chapter eighty-one.

§ 15. Within fourteen days after the sale, the officer shall leave an attested copy of the execution and of the return thereon, with the officer of the company whose duty it is to record transfers of shares; and the purchaser is thereupon entitled to a certificate or certificates of the shares bought by him, on paying the fees therefor, and for recording the transfers; and if such shares or interest were attached in the suit in which the execution issued, he shall have all dividends which accrued after the attachment.

[Section applied. *Hagar v. Bank*, 63 Me. 514.]

§ 16. In selling such shares or interest, the officer holding the execution shall give notice in writing of the time and place of the sale to the debtor, by leaving it at his last and usual place of abode, if within the county where the officer dwells; and public notice thereof by posting it in one or more

public places in the town where the sale is to be made, and in two adjoining towns, if there are so many, thirty days at least before the day of sale; and shall publish an advertisement of the same import, naming the judgment debtor, for three weeks successively before the day of sale, in some public newspaper printed in the county, if any, if not, in the State paper; and if the debtor never lived in the county, posting the notification and publishing the advertisement as aforesaid are sufficient.

[Section cited. *Baker v. Bean*, 74 Me. 20.]

§ 17. When judgment is recovered against a bridge, canal, or other incorporated company with power to receive toll, its franchise may be sold on execution at public auction, giving notice of the time and place of sale by posting a notification in any town, in which the treasurer, clerk, or any officer thereof, if there are any officers, and if not, where any stockholder resides, for thirty days at least before the day of sale, and by causing an advertisement, naming the creditor therein, to be inserted for three weeks successively in a newspaper printed in a county where either of said officers, or, if the company is without officers, where any stockholder resides, the last publication being at least four days before the day of sale; and if there is no newspaper printed in any such county, then in the State paper.

§ 18. In the sale of such franchise, whoever will pay and satisfy such execution, all fees, and incidental expenses, in consideration of being entitled to receive to his own use all such toll as the corporation is entitled to receive, for the shortest period of time, is the highest bidder, and the purchaser for such period; and immediately after such sale, the officer shall deliver to him possession of the toll houses and gates, in whatever county situated, and state his doings therein in his return.

§ 19. The purchaser of such franchise, and those claiming under him, may receive to their own use the tolls accruing within the time limited in the purchase, and shall have all the powers of the corporation necessary for the convenient use of the property, be subject to the same duties and penalties during the term of said purchase, and may recover of said corporation any moneys paid or expenses incurred in consequence of such liability, and without their fault or negligence.

§ 20. The corporation, at any time within three months after the day of sale, may redeem said franchise by paying to the purchaser the sum which he paid in satisfaction of the execution, with twelve per cent. interest, in addition to the toll received.

§ 21. The provisions of the four preceding sections apply to the franchises of railroad corporations whose railroads lie wholly within the State, except that notice shall be given of the time and place of such sale.

Trustee process; chattel mort.— R. S., Tit. ix, ch. lxxxvi, §§ 8, 9, 36; ch. xci, § 1; ch. ciii, § 17.

by posting a notification thereof at the courthouse in each county through which such railroad runs, either wholly or in part, for thirty days at least before the day of sale, and by causing an advertisement to be inserted for three weeks successively in at least one newspaper published in each county through which the road runs, either wholly or in part, the last publication to be at least four days before the day of sale, and if there is no newspaper printed in any one or more of such counties, then in the State paper instead; and when the company has an established office in the State, notice of the sale shall also be given by leaving an attested copy thereof at the office of said company for not less than thirty days previous to such sale; and notice given in the manner herein provided is sufficient. The officer shall deliver to the purchaser a conveyance by deed of the franchise so sold.

§ 23. If a share in a corporation, or other property that may be attached without taking and keeping possession thereof, is attached or taken on execution, and is subsequently attached or taken on execution by another officer, he shall give notice thereof to the officer who sells under the first attachment or seizure; and if, without such notice, he pays the balance of the proceeds of sale to the debtor, he is not liable therefor to the person claiming under such subsequent attachment or seizure.

## CHAPTER LXXXVI.

### Trustee Process.

Sec. 8. Corporations may be summoned as trustees; they may answer by attorney or agent, and disclose.

9. Taxes due from principal defendant to corporations are exempted.

36. Liability of stockholders of a corporation.

§ 8. All domestic corporations, and all foreign or alien companies or corporations established by the laws of any other State or country, and having a place of business, or doing business within this State, may be summoned as trustees, and trustee writs may be served on them, as other writs are served on such companies or corporations; and they may answer by attorney or agent, and make disclosures, which shall be signed and sworn to by such attorney or agent, or such other person upon whom legal service of the writ may be made; and the same proceedings shall thereupon be had throughout, except necessary changes in form, as in other cases of foreign attachment.

[See *Walker v. Tewksbury*, 67 Me. 496.

A corporation summoned as trustee may disclose by attorney. *Head v. Merrill*, 34 Me. 586.

A railroad company, in making disclosures by agent under a trustee process, is not concluded by entries upon its books. *Bigelow v. R. R. Co.*, 37 Me. 320.

Where corporation is summoned as trustee, what is sufficient service. *Harris v. R. R. Co.*, 47 Me. 298.

Money in hands of station agent, received for tickets and freight, cannot be attached by trustee process by creditor of company. *Pettingill v. R. R. Co.*, 51 Me. 370.

Cashier of bank in which funds of a corporation are deposited cannot be holden as trustee of such corporation. *Sprague v. Nav. Co.*, 52 Me. 592.

See *Foxton v. Kucking*, 55 Me. 350; *Clark v. Clark*, 62 id. 256.]

§ 9. Any corporation summoned as trustee of a defendant, may set off and deduct from any amount found due the defendant from the trustee and attached by trustee process, the amount due from the defendant to the trustee for taxes.

§ 36. \* \* \* The amount, which a stockholder of a corporation is liable to pay to a judgment creditor thereof, may be attached by a creditor of such judgment creditor, by trustee process served on such stockholder at any time after the commencement of the judgment creditor's action against him, and before the rendition of judgment therein.

See ch. 46, §§ 37, 38, as to liability of stockholders.

## CHAPTER XCI.

### Mortgage of Personal Property.

Sec. 1. Mortgage by corporation to be recorded where.

Section 1. (As amended February 21, 1895.) No mortgage of personal property is valid against any other person than the parties thereto, unless possession of such property is delivered to, and retained by the mortgagee, or the mortgage is recorded by the clerk of the city, town or plantation organized for any purpose, in which the mortgagor resides, when the mortgage is given. When all the mortgagors reside without the State, the mortgage shall be recorded in said city, town or plantation, where the property is when the mortgage is made; but if a part of the mortgagors reside in the State, then in the cities, towns or plantation in which such mortgagors reside, when the mortgage is given. A mortgage made by a corporation, shall be recorded in the town where it has its established place of business. If any mortgagor resides in an unorganized place, the mortgage shall be recorded in the oldest adjoining town or plantation, organized as aforesaid, in the county.

Mortgage of domestic to foreign corporation. See Act of 1897, at p. 37.

## CHAPTER CIII.

### Estates in Dower.

Sec. 17. Demand upon a corporation, and the time for bringing the action.

§ 17. When a corporation is the tenant of the freehold, she (the widow) must demand her dower in writing of any officer thereof, on whom a writ in a civil action against it may be served; and the time between the demand and the suit shall be sixty days, instead of thirty; but a second demand may be made as aforesaid.

See ch. 46, § 50.

Embezzlement; false certificates, etc.— R. S., Tit. xi, ch. cxx, § 9; ch. cxxi, §§ 9, 10.

[When a foreign corporation is seized of real estate situated in this State, and has a tenant thereon, the demand of dower may be made, under provisions of above section, upon the tenant in possession. *Stevens v. Bank*, 70 Me. 189.]

## TITLE XI. CRIMES AND OFFENSES.

### CHAPTER CXX.

#### Larceny

Sec. 9. Embezzlement by agent is larceny.

§ 9. \* \* \* Any insurance agent, or agent of any corporation doing business in the State, who appropriates to his own use any money, or substitute for money, received by him as such agent, or refuses or neglects to pay over and deliver the same to the party entitled to receive it, for thirty days after written demand upon him therefor, is guilty of larceny, and shall be punished accordingly.

### CHAPTER CXXI.

#### Forgery and Counterfeiting, and Fraudulent Stocks.

Sec. 9. Forgery, by false certificates and fictitious signatures.

10. Making or issuing false certificates of stock, or pledging genuine, without authority.

§ 9. If any any person, legally authorized to take the proof or acknowledgment of any

instrument that by law may be recorded, willfully and falsely certifies that such proof or acknowledgment was duly made; or if any person fraudulently affixes a fictitious or pretended signature, purporting to be that of an officer or agent of a corporation, to any written instrument purporting to be a draft, note, or other evidence of debt issued by such corporation, with intent to pass the same as true, although such person never was an officer or agent of such corporation, or never existed, he is guilty of forgery and shall be punished as provided in section one.

§ 10. If an officer or agent of a corporation willfully signs with intent to issue, or issues any certificate purporting to be a certificate or other evidence of the ownership of the transfer of any stock in such corporation, not authorized by its charter, by-laws, or votes, or without such authority issues, sells, or pledges such certificate or other evidence of ownership or transfer of stock after it is lawfully signed, he shall be punished by imprisonment in the State prison for not more than ten years and by fine not exceeding one thousand dollars.

[Where a crime is committed, under color of corporate authority, the individuals concerned, and not the corporation, should be indicted. *State v. Works Co.*, 20 Me. 41.]

## LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1884.

1. Relating to record of changes in organization of corporations.
2. To repeal penalties and forfeitures on account of failure to comply with certain laws.
3. To provide for fortnightly payment of wages.
4. To regulate hours of labor and employment of women and children.
5. Relating to use of corporate seal.
6. To prevent formation of trusts and combinations.
7. Requiring foreign corporation to send detailed statement to bank examiner.
8. To provide for corporation reporting to State librarian.
9. Relating to the employment of labor.
10. To define the rights of minority stockholders.
11. To give right of action for injuries causing death.
12. In relation to organization of corporations specially chartered.
13. Relating to changes in location of corporations.
14. Relating to taxation of real estate corporations.
15. Relating to organization of corporations under the general law.
16. Relating to service of process on foreign corporations acting as trustees under mortgages.
17. Relating to transfers of stock.

#### Act 1.

AN ACT relating to corporations and record of changes in organization thereof.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. Whenever a corporation shall make a change in its charter or cer-

tificate of organization, in any manner, for the more convenient transaction of its business, it shall forward a notice of such change to the secretary of State, who shall record the same in a book kept for that purpose, and for making such record the corporation shall pay the secretary of State for his services, five dollars, in advance; said fee not to be within the provisions of section thirty-eight of chapter two of the Revised Statutes.

§ 2. This act shall take effect when approved.

(Approved March 6, 1885.)

#### Act 2.

AN ACT to repeal penalties and forfeitures on account of the failure to comply with section eight of chapter forty-eight of the Revised Statutes of eighteen hundred and seventy-one.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. No action or indictment shall be maintained for any penalty, or forfeiture, or fine imposed in consequence of a failure to comply with the requirements of section eight, chapter forty-eight of the Revised Statutes of eighteen hundred and seventy-one; and this act shall apply to

## Wages; employes in factories — Acts, March 17, 1887.

pending suits and indictments commenced since the repeal of said statute, except as to costs.

(Approved March 6, 1885.)

**Act 3.**

**AN ACT** to provide for the fortnightly payment of wages.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. Every manufacturing, mining, quarrying, stone-cutting, mercantile, horse railroad, telegraph, telephone and municipal corporation, and every incorporated express and water company, and any person or firm engaged in any of the above specified kinds of business, having in their employ more than ten persons, shall pay fortnightly each and every employe engaged in its business, the wages earned by such employe to within eight days of the date of said payment; Provided, however, That if at any time of payment, any employe shall be absent from his regular place of labor, he shall be entitled to said payment at any time thereafter on demand.

§ 2. (As amended February 28, 1895, and March 17, 1897.) Any corporation violating any of the provisions of this act, shall be punished by a fine not less than ten nor more than twenty-five dollars on each complaint under which it is convicted, Provided, Complaint for such violation is made within thirty days from the date thereof.

§ 3. When a corporation against which a complaint is made under this act, fails to appear after being duly served with process, its default shall be recorded, the allegations in the complaint taken to be true, and judgment rendered accordingly.

§ 4. When judgment is rendered upon any such complaint against a corporation, the court may issue a warrant of distress to compel the payment of the penalty prescribed by law, together with costs and interest.

§ 5 The provisions of this act shall not apply to municipal officers whose services are paid for by the day, or to teachers employed by municipal corporations.

§ 6. This act shall take effect May one, eighteen hundred and eighty-seven.

(Approved March 17, 1887.)

Employment of minors in factories. Ch. 48, §§ 13, 14, 15.

**Act 4.**

**AN ACT** to regulate the hours of labor and the employment of women and children in manufacturing and mechanical establishments. (As amended March 17, 1893.)

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. No female minor under eighteen years of age, no male minor under

sixteen years of age, and no woman shall be employed in laboring in any manufacturing or mechanical establishment in this State, more than ten hours in any one day, except when it is necessary to make repairs to prevent the interruption of the ordinary running of the machinery, or when a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed sixty in a week; and no male person sixteen years and over shall be so employed as above, more than ten hours a day during minority, unless he voluntarily contracts to do so with the consent of his parents, or one of them, if any, or guardian, and in such case he shall receive extra compensation for his services; Provided, however, Any female of eighteen years of age or over, may lawfully contract for such labor for any number of hours in excess of ten hours per day, not exceeding six hours in any one week or sixty hours in any one year, receiving additional compensation therefor; but during her minority, the consent of her parents, or one of them, or guardian, shall be first obtained.

§ 2. Every employer shall post in a conspicuous place in every room where such persons are employed, a notice printed in plain, large type, stating the number of hours' work required of them on each day of the week, the exact time for commencing work in the morning, stopping at noon for dinner, commencing after dinner, and stopping at night; the form of such printed notice shall be furnished by the inspector of factories, workshops, mines and quarries hereafter named, and shall be approved by the attorney-general. And the employment of any such person for a longer time in any day than that so stated, shall be deemed a violation of section one, unless it appears that such employment is to make up for time lost on some previous day of the same week, in consequence of the stopping of machinery upon which such person was employed or dependent for employment.

§ 3. Whoever, either for himself, or as superintendent, overseer or agent of another, employs or has in his employment any person in violation of the provisions of section one, and every parent or guardian who permits any minor to be so employed, shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars for each offense. A certificate of the age of a minor made by him and by his parent or guardian at the time of his employment, shall be conclusive evidence of his age in behalf of the hirer, upon any prosecution for a violation of the provisions of section one. Whoever falsely makes and utters such a certificate with an intention to evade the provisions of this act, shall be subject to a fine of one hundred dollars.

§ 4. It shall be lawful for any person, firm or corporation engaged in any manufactur-

## Children in factories, etc.—Act, March 17, 1887.

ing or mechanical business, to contract with adult or minor employes to give one week's notice of intention on such employe's part, to quit such employment under a penalty of forfeiture of one week's wages. In such case, the employer shall be required to give a like notice of intention to discharge the employe; and on failure, shall pay to such employe a sum equal to one week's wages. No such forfeiture shall be enforced when the leaving or discharge of the employe is for a reasonable cause. Provided, however, The enforcement of the penalty aforesaid, shall not prevent either party from recovering damages for a breach of the contract of hire.

§ 5. No child under twelve years of age, shall be employed in any manufacturing or mechanical establishment in this State. Whoever, either for himself, or as superintendent, overseer or agent of another, employs or has in his employment any child in violation of the provisions of this section, and every parent or guardian who permits any child to be so employed, shall be punished by a fine of not less than twenty-five nor more than fifty dollars for each offense.

§ 6. No child under fifteen years of age shall be employed in any manufacturing or mechanical establishment in this State, except during vacations of the public schools in the city or town in which he resides, unless during the year next preceding the time of such employment, he has for at least sixteen weeks, attended some public or private school, eight weeks of which shall be continuous; nor shall such employment continue unless such child in each and every year, attends some public or private school for at least sixteen weeks, and no child shall be so employed who does not present a certificate made under or by the direction of the school committee, superintendent of the public schools, or the teacher of a private school, that such child has so attended school. And it shall be the duty of such committee, superintendent or teacher, to furnish such a certificate in accordance with the fact upon request and without charge. Provided, That this section shall not take effect until January one, eighteen hundred and eighty-eight.

§ 7. Any parent or guardian who procures a child to be employed contrary to section six, and any corporation, owner, superintendent or agent of the owner, of such establishment violating the provisions of said section, shall forfeit the sum of one hundred dollars, one-half to the use of the county, and one-half to the use of the city or town where the offense is committed. Money so recovered to the use of the city or town, shall be added to its school money. It shall be the duties of the school committees and superintendent of public schools, to inquire into violations of said section and report the same to the county attorney, who shall prosecute therefor.

§ 8. Every owner, superintendent or over-

seer of any such manufacturing or mechanical establishment shall require and keep on file, a certificate of the age and place of birth of every child under sixteen years of age employed therein, so long as such child is so employed, which certificate shall also state in the case of a child under fifteen years of age, the amount of his school attendance during the year next preceding such employment. Said certificate shall be signed by a member of the school committee of the place where such attendance has been had, or by some one authorized by such committee, and the form of said certificate shall be furnished by the State superintendent of schools, and shall be approved by the attorney-general. The inspectors of factories, workshops, mines and quarries hereinafter named or either of his assistants, may demand the names of the children under sixteen years employed in such establishment, in the several cities and towns of the State, and may require that the certificates of age and school attendance prescribed in this section, shall be produced for his inspection, and a failure to produce the same, shall be prima facie evidence that the employment of such child is illegal.

§ 9. The governor, by and with the advice and consent of the council, shall appoint an inspector of factories, workshops, mines and quarries, at a salary of one thousand dollars a year, who shall hold office for two years, or until his successor is appointed, unless sooner removed. It shall be the duty of the inspector of factories, workshops, mines and quarries to inquire into any violations of this act, and also to assist in the collection of statistics and other information which may be required, for the use of the bureau of industrial and labor statistics. And said inspector of factories, workshops, mines and quarries shall, in addition to his salary provided by law, be allowed his reasonable expenses. Whenever the governor of this State shall be satisfied that the inspector of factories, workshops, mines and quarries cannot perform all the duties of his said office required by this section, in person, he shall, with the advice and consent of the council, appoint a sufficient number of assistant deputies to assist him in so doing. Said assistants shall hold their office for the term of two years, and act under the direction of said inspector of factories, workshops, mines and quarries, and shall receive the sum of two dollars per day and reasonable expenses while actually engaged in duty. Said assistants may, at any time, be removed for cause by the governor. All bills for the expenses of the inspector of factories, workshops, mines and quarries and for the services and expenses of such assistant deputies, shall be audited by the council. For the purpose of inquiring into any violation of the provisions of this act, and enforcing the penalties thereof, such inspector of factories, workshops, mines

and quarries and assistants may, at all reasonable times, enter any manufacturing or mechanical establishment and make investigation concerning such violation. Such investigation shall be conducted with as little interruption as possible to the prosecution of the business of such establishment. Whoever interferes with said inspector of factories, workshops, mines and quarries or his assistants, in performance of their duties as prescribed in this act, shall be fined fifty dollars.

§ 10. Nothing in this act shall apply to any manufacturing establishment or business, the materials and products of which are perishable and require immediate labor thereon, to prevent decay thereof or damage thereto.

§ 11. This act shall take effect July 1, 1887. (Approved March 17, 1887.)

### Act 5.

AN ACT relating to use of corporate seals.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Whenever a corporate seal is used or required on any instrument, an impression made on the paper of such instrument by the seal of the corporation, without any adhesive substance shall be deemed a valid seal.

(Approved February 5, 1889.)

See ch. 46, § 2 (3).

[At common law, "the impression of a seal is not a seal;" otherwise now. *Woodman v. R. R. Co.*, 50 Me. 549.]

### Act 6.

AN ACT to prevent such formation of trusts, combination of business firms, incorporated or unincorporated companies, or associations of persons or stockholders, as may be contrary to public policy

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. It shall be unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company, or any association of persons or stockholders, organized for the purpose of manufacturing, producing, refining, or mining any article or product which enters into general use and consumption by the people, to form or organize any trust, or to enter into any combination of firms, incorporated or unincorporated companies, or association of stockholders, or to delegate to any one or more board or boards of trustees or directors the powers to conduct and direct the business of the whole number of firms, corporations, companies or

associations which may have, or which may propose to form a trust, combination or association inconsistent with the provisions of this section and contrary to public policy.

§ 2. No certificate of stock, or other evidence of interest, in any trust, combination, or association, as named in section one of this act, shall have legal recognition in any court in this State, and any deed to real estate given by any person, firm, or corporation, for the purpose of becoming interested in such trust, combination or association, or any mortgage given by the latter to the seller, as well as all certificates growing out of such transaction, shall be void.

§ 3. Any incorporated company now operating under the laws of this State, and which at the date of the passage of this act, may be interested in any trust, combination or association, named in section one of this act, or any firm, incorporated or unincorporated company, or association of persons or stockholders, who shall enter into or become interested in such trust, combination or association, after the passage of this act, shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five nor more than ten thousand dollars; Provided, That nothing in this section shall be so construed as to apply to such incorporated companies as shall, within ninety days from the date of the passage of this act, withdraw from and sever all connections with such trust, combination or association.

§ 4. It shall be the duty of the secretary of State, as soon as may be after the passage of this act, to forward to the president, secretary or treasurer, of each incorporated company organized for the purpose of manufacturing, producing, refining or mining any article or product which enters into general use and consumption by the people, and doing business within this State, a copy of this act, and also a letter of inquiry as to whether said corporation has merged all or any part of its business or interests in or with any trust, combination or association of persons or stockholders as named in section one of this act, and to require an answer, under oath, of the president, secretary, treasurer, or directors of said company, a form of affidavit, together with questions to be answered, shall be prescribed by the secretary of State, and forwarded with said letter, and on neglect or refusal to make answers under oath to such questions for the term of ninety days from the date of this act, the secretary of State shall notify the attorney-general, whose duty it shall be forthwith to file an information in the nature of a writ of quo warranto, with the supreme judicial court, against said corporation and the court may, upon hearing and proof of such neglect or refusal, decree the dissolution of said corporation, and its corporate rights and powers shall be terminated.

(Approved March 7, 1889.)

## Statement of foreign corporation — Act, March 9, 1889.

## Act 7.

AN ACT requiring foreign corporations to send to the bank examiner a detailed statement of their condition.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. (As amended, L. 1891, chap. 131.) No foreign corporation, or any agent or representative thereof, shall offer to sell, sell or negotiate in this State, any bonds, mortgages, notes or other choses in actions, issued, endorsed or guaranteed by it, unless it first obtains a license therefor from the bank examiner. Before receiving such license it shall furnish the examiner a detailed statement of its condition, which statement shall clearly describe the various classes of its assets and liabilities and shall be sworn to by either its president, treasurer or secretary, and certified to be correct by at least two of its directors. Said statement shall in all particulars be as full as the examiner may require. Upon receiving such statement the bank examiner may grant a license authorizing such corporation to conduct its business in this State subject to its laws until the first day of the next December, and such license may be renewed annually thereafter so long as the bank examiner regards the corporation responsible and safe, but in all cases to terminate on the first day of the succeeding December. The examiner may revoke such license at any time should he deem the condition of such corporation or its management unsafe, whereupon the right of such corporation to do business in this State shall terminate. For such license and each renewal, the corporation shall pay the examiner for his use twenty dollars.

§ 2. (As amended, L. 1891, chap. 131.) It shall be the duty of such corporation or its agents to publish at their own expense in some newspaper published in any town or city designated by the bank examiner, a copy of the statement furnished him. Every such corporation shall at the time of making application for license as hereinbefore provided, appoint in writing the bank examiner or his successor in office to be its true and lawful attorney upon whom all lawful processes in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the corporation, and that the authority shall continue in force so long as any liability remains outstanding against the corporation in this State. Service made in such manner on said corporation in any such suit or proceeding shall be valid and binding thereon, and the judgment rendered therein shall bind the corporation as valid in every respect whether

the defendants appear or not. If license is granted by the bank examiner he shall place said writing on file in his office to take effect therefrom, but if license is not granted by him it shall be returned to the corporation. Copies of said writing, certified by the bank examiner, shall be deemed sufficient evidence thereof. When legal process against any such corporation is served upon said bank examiner, he shall within ten days thereafter mail a copy thereof, postage prepaid, directed to the address of said corporation, or to any person designated by said corporation in writing. The plaintiff in each process so served shall pay to the bank examiner at the time of such service, a fee of two dollars which shall be recovered by him as a part of his taxable costs if he prevails in the suit.

§ 3. (As amended, L. 1891, chap. 131.) Such corporation and its agents for the purposes hereinbefore mentioned, are under the supervision of the bank examiner and shall at all times at his request furnish him such statements and information as he may desire, together with full facilities to ascertain the true condition and standing of the same, and no person shall act as agent or representative of such corporation before the license herein provided is granted or after the same has been revoked. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof be liable to a fine not exceeding five hundred dollars or imprisonment not exceeding sixty days, or both. All provisions in sections one, two and three of the aforesaid chapter two hundred and eighty-six, inconsistent with this act are hereby repealed.

§ 4. No president, treasurer, clerk or employe of any savings bank in this State, shall act as agent or representative in this State, of any foreign corporation engaged in the business of selling or negotiating any bonds, mortgages, notes or other choses in action.

(Approved March 9, 1889.)

See ch. 46, § 22.

## Act 8.

AN ACT to provide for the preservation of local histories, financial, and other reports of towns, cities, counties and corporations.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

\* \* \* \* \*

§ 3. The directors of all corporations doing business in this State shall transmit to the librarian of the State library, copies of all printed reports, relating to the affairs of said corporations.

(Approved March 9, 1889.)

Employment; minority stockholders — Acts, March, 13, 1889, and March 21, 1891.

**Act 9.**

**AN ACT relating to the employment of labor.**

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

(As amended March 31, 1891.) "Any employer, employe, or other person, who by threats of injury, intimidation or force, alone or in combination with others, prevents any person from entering into, continuing in or leaving the employment of any person, firm or corporation, shall be punished by imprisonment not more than two years, or by fine not exceeding five hundred dollars."

(Approved March 13, 1889.)

**Act 10.**

**AN ACT to define the rights of minority stockholders.**

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. No corporation shall sell, lease or in any manner part with its franchises except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the subject-matter of the proposed sale, lease or consolidation. All such sales, leases and consolidations shall be subject to the provisions of this act, and to the prior liens of stockholders as herein defined.

§ 2. If any stockholder in any corporation, which shall vote to sell, lease or consolidate its franchise, shall vote in the negative and shall file his written dissent therefrom with the president, clerk or treasurer of such corporation within one month from the day of such vote, the corporation in which he is a stockholder may within one month after such dissent is so filed, enter a petition with the supreme judicial court, sitting in equity, in the county where it held its last annual meeting, in term time or in vacation, setting forth in substance the material facts of the transaction, the action of the corporations thereon, the names and residence of all dissenting stockholders whose dissents were so filed, making such dissenting stockholders parties thereto, and praying that the value of the shares of such dissenting stockholders may be determined, and for other appropriate relief.

§ 3. If any such corporation shall fail to enter such petition as aforesaid, any stockholder dissenting as aforesaid may within one month thereafter enter such petition and prosecute the same, making such corporation party defendant. In either case the court shall fix the time of hearing and shall order notice thereof to all parties interested, by publication in some newspaper or news-

papers at least two weeks successively, and such personal service as is required upon bills in equity.

§ 4. The court, or any justice thereof in term time or in vacation, shall hear the parties and determine as soon as practicable the value of the stock of such dissenting stockholder; and shall make and enforce all such orders and decrees as may be necessary to secure to such stockholders all their rights. Such corporation shall, notwithstanding any appeal as hereinafter authorized, forthwith deposit the amount so awarded, in some bank or trust company designated by the court, to be by it held until final judgment, and paid to the parties as thereafter ordered by the court directing such deposit. Upon such deposit and upon compliance with final judgment as hereinafter ordered, the shares of such stockholders shall become the property of such corporation, and the court may make and enforce such orders as may be necessary to secure its title thereto.

§ 5. Within thirty days after filing the decree determining such values, as aforesaid, either party may enter an appeal therefrom, to be heard at the next term of the supreme judicial court in the county where such petition is pending. The issue may thereupon, at the request of any party thereto, be submitted to a jury. If upon such trial the amount of such award is increased, the stockholders shall have judgment and execution against the petitioning corporation or corporations defending, for such increase with interest and costs; and if not increased, such corporation may withdraw from said deposit, the amount of the decrease with interest and costs. During the pendency of such appeal, the appellant shall have a lien upon all the property of the corporation interested in such sale or lease, or consolidation for thirty days after judgment on appeal. Such lien shall have precedence over any mortgages or leases made after any vote of sale, lease or consolidation. All such liens may be released upon filing with the court, a bond in such amount and with such sureties as the court may approve. Two or more stockholders may join in the same appeal.

§ 6. Any stockholder failing to file his dissent as required in section two shall be deemed to have assented to such vote. If it appears that any stockholder is legally incapacitated from giving such assent or waiver, the court shall appoint suitable guardians or representatives for such persons, and the case shall then be heard and determined as if such stockholders had filed their dissent as required by section two. Provided, however, That, if the proceedings authorized by this act are not had, then as against any stockholder who is a minor, or otherwise legally incapacitated, and who has no guardian, the period of one month in which to file the written dissents aforesaid



## Minority stockholders; actions for injuries — Acts, March 21 and 31, 1891.

shall not begin to run until the removal of the incapacity, by the appointment of a guardian or otherwise and actual notice of the vote of sale, lease or consolidation.

§ 7. Every stockholder appearing in answer to, or filing any petition, by himself, guardian or other legal representative, shall simultaneously therewith or within such time as the court may allow, deposit in court his certificate of shares duly indorsed to the corporation of which he is a shareholder, or some other sufficient transfer thereof, which shall there remain subject to the order of the court. All attachments and transfers of such shares shall be subject to the final decrees in such proceeding; and any such attaching creditor or transferee shall be allowed to become a party to the proceedings to protect his interests; and if such person, so claiming under such transfer or attachment omits or fails to intervene in such proceedings, his omission as a party shall not bar or impair the proceedings.

§ 8. If none of the corporations interested in such petition shall pay or deposit the amount as herein ascertained and decreed, with interest thereon, within such time as the court shall order, any stockholder, entitled to such amount, may at his option take judgment and execution therefor, with interest and costs, against such corporation or withdraw his stock aforesaid; and after such withdrawal or if said execution is returned unsatisfied within thirty days after judgment, the owner of such shares shall retain all the rights of a dissenting stockholder as though no proceedings had taken place. All stockholders entitled to a remedy hereunder, shall have a lien upon the property of the corporations in which they are stockholders which shall take precedence of all mortgages or leases, of any kind made after any vote of sale, lease or consolidation. Such liens may be released as provided in section five.

§ 9. The supreme judicial court, or any justice thereof, may in term time or vacation hear and determine said petitions, and make all orders for giving notice to non-resident parties, and taking action with reference to them, for the enforcement of the rights of any party to the proceeding, for the consolidation of two or more petitions, for the payment of interest on the adjudged value of the shares, for the payment of dividends, pending the proceedings, for interest upon the deposit aforesaid, for the distribution of costs between the parties and for enforcing its orders and decrees, as are consistent with the principles of equity practice, and as the convenient and speedy settlement of the controversy may require.

§ 10. If any petition shall fail for any matter of form, any party interested therein may file a new petition within two months thereafter. No petition shall be abated by

the death of any party, but may thereupon be summarily revived by suggestion and amendment.

§ 11. This act shall not apply to nor affect any pending action at law or in equity or cause of action, legal or equitable, heretofore accrued, nor any special acts relating to the rights of minority stockholders in any particular corporations enacted heretofore, or by the present legislature, nor to any mortgage legally made.

§ 12. In the event either of the corporations interested has consolidated its stock with corporations created by any other State or States, or the stock therein is held by virtue of concurrent legislation of one or more States, and proceedings have been commenced for valuing the stock and paying the value thereof in any State having jurisdiction, such proceedings shall, while pending, be a bar to any under this statute; but if such proceedings in any other State shall fail for any reason not touching the merits, a petition may be filed as herein provided, within two months thereafter.

(Approved March 21, 1891.)

## Act 11.

AN ACT to give a right of action for injuries causing death.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default, is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as shall amount to a felony.

§ 2. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of his widow, if no children, and of the children, if no widow, and if both, then of her and them equally, and, if neither, of his heirs. The jury may give such damages as they shall deem a fair and just compensation, not exceeding five thousand dollars, with reference to the pecuniary injuries resulting from such death to the persons for whose benefit such action is brought, Provided, That such action shall be commenced within two years after the death of such person.

(Approved March 31, 1891.)

Special charters; location — Acts, April 3, 1897, and March 2, 1893.

### Act 12.

AN ACT in relation to the organization of corporations chartered by special statute.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. Before commencing business, the president, treasurer, and a majority of the directors of any corporation chartered by special act of the legislature, shall prepare a certificate setting forth the date of approval of its charter, the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, and the number and names of the directors, and shall sign and make oath to it. Such certificate shall be recorded in the registry of deeds in the county where its principal office is to be located, in a book kept for that purpose, and a copy thereof, certified by such register, shall be filed in the secretary of state's office, who shall enter the date of filing thereon and on the original certificate to be kept by the corporation, and shall record said copy in a book kept for that purpose. From the time of filing such certificate in the secretary of state's office, the stockholders of said corporation, their successors and assigns, shall be a corporation.

§ 2. (As amended L. 1893, chap. 185.) The certificate mentioned in the preceding section shall not be received and filed by the secretary of State, except upon the payment to him of the sum of fifteen dollars, if the capital stock does not exceed five thousand dollars; twenty-five dollars if the capital stock exceeds five thousand dollars and does not exceed ten thousand dollars; seventy-five dollars if the capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars; one hundred and twenty-five dollars if the capital stock exceeds fifty thousand dollars and does not exceed one hundred thousand dollars; sixty dollars upon every one hundred thousand dollars or fraction thereof in excess of one hundred thousand dollars, if the capital stock exceeds one hundred thousand dollars, which sum is to be paid by the secretary of State to the State treasurer for the use of the State. Provided, That the provisions of this section shall not apply to corporations chartered for charitable and benevolent purposes.

§ 3. (As amended L. 1893, chap. 185.) No certificate of organization of any corporation for banking, insurance, construction and operation of railroads, or aiding in the construction thereof, the business of savings banks, trust companies, or corporations intended to derive a profit from the loan or use of money, safe deposit companies, renting of safes and burglar and fire-proof vaults, telegraph and telephone

companies, electric or gas-light companies, street railway companies, water companies, or any corporation authorized to exercise the right of eminent domain, shall be received and filed by the secretary of State except upon payment to him of twenty-five dollars, if the capital stock does not exceed five thousand dollars; fifty dollars if the capital stock exceeds five thousand dollars and does not exceed ten thousand dollars; one hundred dollars if the capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars; two hundred dollars if the capital stock exceeds fifty thousand dollars and does not exceed one hundred thousand dollars; seventy-five dollars upon every one hundred thousand dollars or fraction thereof in excess of one hundred thousand dollars, if the capital stock exceeds one hundred thousand dollars, which sum is to be paid by the secretary of State to the State treasurer for the use of the State.

§ 4. This act, so far as relates to the payment of fees, shall not apply to such corporations as shall be organized prior to July first, one thousand eight hundred and ninety-one.

(Approved April 3, 1891.)

### Act 13.

AN ACT additional to chapter 48 of the Revised Statutes, relating to changes in location of corporations.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. Any corporation organized under sections sixteen and seventeen of chapter forty-eight of the Revised Statutes at a legal meeting of its stockholders, may by a vote representing a majority of the stock issued, change its location from one county to another in this State, and the corporation shall file, by its clerk or other officer, in the registry of deeds in each of said counties, within twenty days after such change of location, the certificate required by section eleven of chapter forty-six of the Revised Statutes, as amended by section two of chapter two hundred sixty-three of the public laws of eighteen hundred and eighty-nine.

(Approved March 2, 1893.)

### Act 14.

AN ACT relating to the taxation of real estate corporations.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. The buildings, lands, and all other property, real and personal, including all reserve funds, accumulations and undivided profits of corporations organized for the purpose of buying, selling and leasing

Organization; service, etc.; transfers of stock—Acts, Mar. 6, '95; Feb. 24 and Mar. 26, 1897.

real estate, shall be taxed to the corporation or the persons having possession of such property, in the place where such land and other property are situated, and there shall be a lien for two years on such property for the payment of the such tax, and the same may be sold for payment thereof as in other cases; and shares of the capital stock of such corporations shall not be taxed to the owners thereof.

§ 2. This act shall take effect when approved.

(Approved March 29, 1893.)

See ch. 6, § 28, and note.

#### Act 15.

AN ACT additional to chapter 48 of the Revised Statutes, relating to organization of corporations, under the general law.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. If the stockholders of any corporation already organized or that may be hereafter organized under sections sixteen and seventeen of chapter forty-eight of the Revised Statutes shall desire to decrease the amount of its capital stock, the stockholders, at a meeting duly called for the purpose, or at any annual meeting, when notice shall have been given of such proposed action in the call therefor, may by a vote representing a majority of all the stock issued, decrease the amount of its capital stock to any amount desired, and the corporation shall give notice of such change to the secretary of State within ten days thereafter. And each stockholder shall, within three months after such meeting, surrender such a proportion of his stock as the amount of decrease shall bear to the amount of the capital stock before the decrease, so that each stockholder shall have the same proportion of the whole capital stock of the company as before the decrease.

§ 2. This act shall not affect or prejudice in any way the rights of creditors of such corporation existing at the time when the reduction of its capital stock authorized under the preceding section shall be consummated.

§ 3. The clerk of any corporation organized under the laws of this State may resign his office as clerk by filing his resignation with the register of deeds in the county where such corporation was organized, said resignation to take effect from and after the time of the receipt of the same by such register of deeds.

(Approved March 6, 1895.)

#### Act 16.

AN ACT relating to service of process on foreign corporations acting as trustees under mortgages.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

In case of the mortgage of the franchises, lands or other hereditaments by any domestic corporation to a foreign corporation as trustee, service of process may be made on any authorized agent of such foreign corporation in the State, or if no such agent can be found, such service may be made upon the bank examiner, who shall immediately notify the corporation by mail. Service made in either of said methods shall be valid and binding upon the corporation in every respect.

(Approved February 24, 1897.)

See ch. 81, §§ 22, 104.

#### Act 17.

AN ACT relating to transfers of stock.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

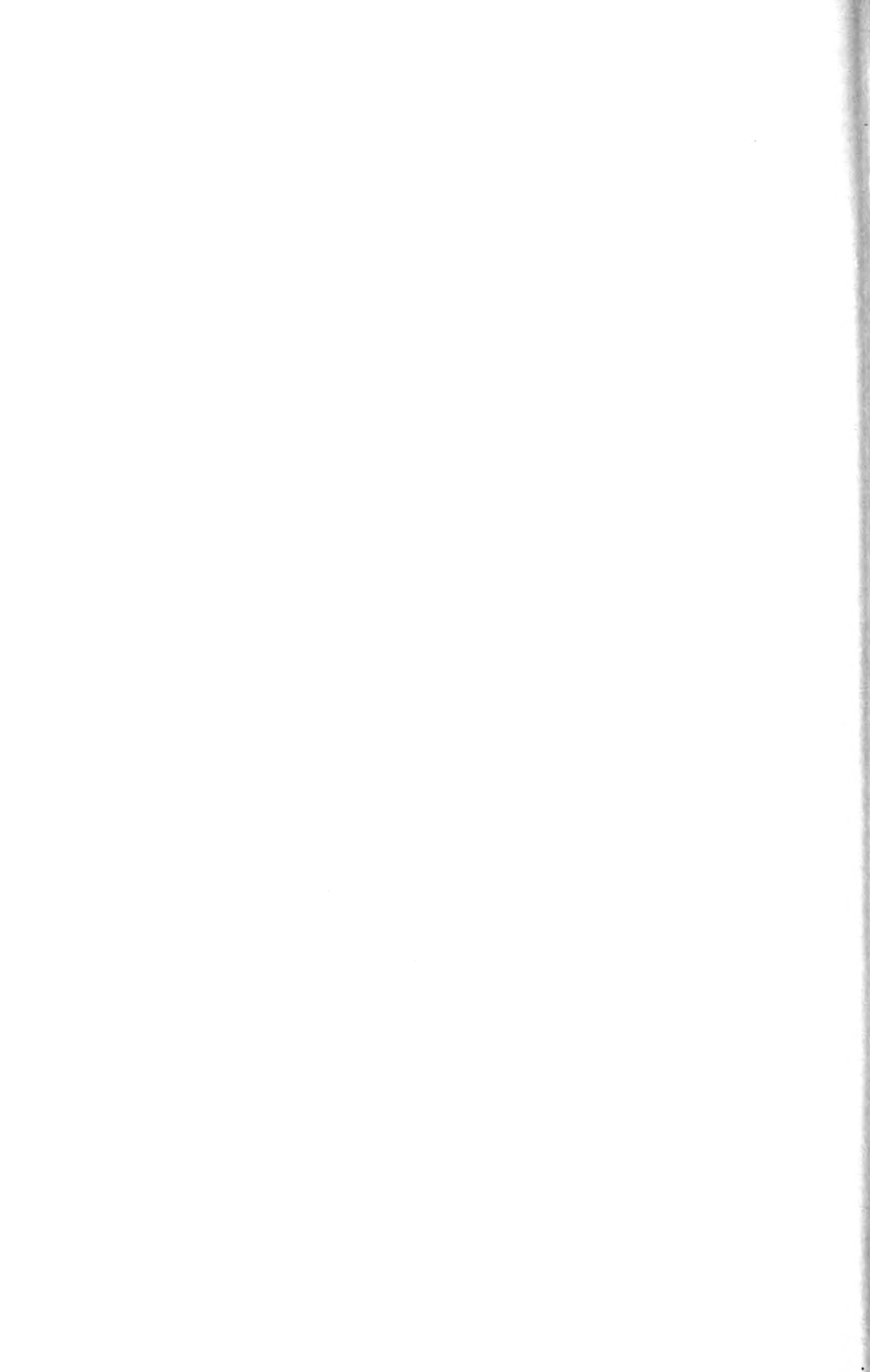
Section 1. The delivery of a certificate of stock of a corporation to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title against all parties.

§ 2. A pledgee for value, holding a certificate of stock of a corporation for security merely, shall not, while he so holds such stock, be subject to any of the liabilities of a stockholder, unless he appears on the books of the corporation as the absolute owner of such stock.

§ 3. No transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation or a new certificate is issued to the person to whom it has been so transferred.

§ 4. Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust fund would be if they were respectively living and competent to act and hold the stock in their own names.

(Approved March 26, 1897.)



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# MARYLAND.

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# MARYLAND.

## CONSTITUTION OF MARYLAND - 1867.

### PROVISIONS RELATING TO CORPORATIONS.

#### Declaration of Rights.

Sec. 41. No monopolies.

§ 41. That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered.

See acts for taxation of certain corporations, at pp. 41-43.

[Act incorporating a ferry company, held not to be repugnant to this section. *Ferry Co. v. Hankey*, 31 Md. 346.]

#### ARTICLE III.

##### Legislative Department.

Sec. 34. Credit of State not to be loaned in aid of corporations.

39. Banking corporations.

40. Private property not to be taken for public use without compensation.

48. Corporations may be formed under general laws

54. No county to give or loan its credit.

58. Taxation upon revenues of foreign corporations.

§ 34. \* \* \* The credit of the State shall not in any manner be given, or loaned to, or in aid of any individual, association or corporation; \* \* \*

See § 54, post.

§ 39. The general assembly shall grant no charter for banking purposes, nor renew any banking corporation now in existence, except upon the condition that the stockholders shall be liable to the amount of their respective share or shares of stock in such banking institution, for all its debts and liabilities upon note, bill, or otherwise; the books, papers, and accounts of all banks shall be open to inspection, under such regulations as may be prescribed by law.

Savings banks may be formed. Art. XXIII, § 29. Liability of stockholders in general. Art. XXIII, § 64, and note.

[See *Hammond v. Straus*, 53 Md. 1.]

§ 40. The general assembly shall enact no law authorizing private property to be taken for public use, without just compensa-

tion, as agreed upon between the parties, or awarded by a jury, being first paid, or tendered to the party entitled to such compensation.

[Where an inquisition is taken, returned, and ratified, according to law, all questions relating to damages are concluded by such inquest. *R. R. Co. v. Compton*, 2 Gill, 20.

The power of appropriating private property for public use is inherent to the sovereignty of the State. *Alexander v. Mayor*, 5 Gill, 383.

Grant of powers of eminent domain must be construed strictly; cannot be exercised for any but a public purpose; and, in general, does not admit of any repetition. *Binney's case*, 2 Bl. 100.

Corporate right to select and acquire land for authorized purposes of the corporation is property. It is an incorporeal hereditament. That portion of the eminent domain granted and subsisting in one corporation cannot be bestowed upon another. *Canal Co. v. R. R. Co.*, 4 G. & J. 5.

Power to take private property for public uses may be exercised for benefit of public by corporations. *Canal Co. v. Archer*, 9 G. & J. 479.

By virtue of the power of eminent domain, private property may be taken for public uses; but cannot be taken from one and given to another in any way. *Hepburn's case*, 3 Bl. 95.

Damages may be assessed either before or after property has been taken; but no unreasonable delay or fraud in taking inquisition will be suffered. *Compton v. R. R. Co.*, 3 Bl. 386. Suits for damages for injury to real property are classed among "personal actions." *Kennerly v. Wilson*, 1 Md. 162.

The principle expressed in this section would exist though it were not written in the Constitution. *Harness v. Canal Co.*, 1 Md. Ch. Dec. 248; *Hoye v. Swan*, 5 Md. 237.

Distinction between right of eminent domain and taxing power. *Moale v. Mayor*, 5 Md. 314.

This section of Constitution construed. *Stewart v. Mayor*, 7 Md. 500.

Court of equity has jurisdiction to prevent, by injunction, a railroad company from making its railroad over land of a private citizen where company has not paid or tendered compensation. *R. R. Co. v. Owings*, 15 Md. 190.

Under above section legislature cannot confer on any corporation power to take private property for any other than public use. *Kane v. Mayor*, 15 Md. 240.

Condemnation by turnpike companies. *Douglass v. Road Co.*, 22 Md. 219.]

§ 48. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and except in cases, where no general laws exist, providing for the creation of corporations of the same general character, as the corporation proposed to be created; and

any act of incorporation, passed in violation of this section shall be void. And as soon as practicable, after the adoption of this Constitution, it shall be the duty of the governor, to appoint three persons learned in the law, whose duty it shall be, to prepare drafts of general laws, providing for the creation of corporations, in such cases as may be proper, and for all other cases, where a general law can be made; and for revising and amending, so far as may be necessary, or expedient, the general laws which may be in existence on the first day of June, eighteen hundred and sixty-seven, providing for the creation of corporations, and for other purposes; and such drafts of laws shall by said commissioners, be submitted to the general assembly, at its first meeting, for its action thereon; and each of said commissioners shall receive a compensation of five hundred dollars for his services, as such commissioner.

All charters granted, or adopted, in pursuance of this section, and all charters heretofore granted and created, subject to repeal or modification, may be altered, from time to time, or be repealed; Provided, Nothing herein contained shall be construed to extend to banks, or the incorporation thereof.

Formation of G. L., art. XXIII, §§ 14 et seq.; §§ 42 et seq. Taxation of corporations. Id., § 302; G. L., art. LXXXI. Existing corporations. Art. XXIII, § 81. Corporation subject to change in law. Id., § 85.

[This provision was merely intended to prohibit future special legislation, and to repeat previous

acts. *Central Coal Co. v. Coal & Iron Co.*, 37 Md. 537.

Every charter hereafter granted is subject to above provision. *Jackson v. Walsh*, 75 Md. 304; s. c., 23 Atl. Rep. 778.

Legislature has power to amend, by special act, a charter obtained under the general law. *Hodges v. R. R. Co.*, 58 Md. 603.

Act of 1882, incorporating *Baltimore Trust and Guarantee Co.*, is constitutional. *Reed v. T. & G. Co.*, 72 Md. 531; s. c., 20 Atl. Rep. 194.]

§ 54. No county of this State shall contract any debt, or obligation, in the construction of any railroad, canal, or other work of internal improvement, nor give, or loan its credit to, or in aid of any association, or corporation, unless authorized by an act of general assembly, which shall be published for two months before the next election for members of the house of delegates in the newspapers published in such county, and shall also be approved by a majority of all the members elected to each house of the general assembly at its next session after said election.

See § 34, ante.

§ 58. The legislature, at its first session after the ratification of this Constitution, shall provide by law for State and municipal taxation upon the revenues accruing from business done in the State by all foreign corporations.

Process on foreign corporations. Art. XXIII, § 295. Taxation of stock owned by non-residents. Art. LXXXI, § 131. Taxation of certain foreign corporations. Act of 1890, at p. 41.

# PUBLIC GENERAL LAWS OF MARYLAND — 1888.

## ARTICLE I.

### Rules of Interpretation.

Sec. 3. Adoption of Code not to impair charter rights.

12. "Person" to include corporation.

§ 3. No rights, property or privileges held under a charter or grant from this State shall be in any manner impaired or affected by the adoption of this Code.

[See *Mayor v. Groshon*, 30 Md. 443.]

§ 12. The word person shall include corporation, unless such a construction would be unreasonable.

[In view of the law a corporation is a person. *Germania v. State*, 7 Md. 1.]

## ARTICLE IX.

### Attachments.

Sec. 2. Corporation may be defendant.  
18. Attachment against stock of corporations.

§ 2. Every person who doth not reside in this State, and every person who absconds, may be made a defendant in an attachment; and any corporation not chartered by this State, or any corporation chartered by this State, but not having the president or a majority of the directors or managers thereof residing in this State, may be made a defendant, as other non-residents.

§ 18. An attachment may be laid on any interest which the defendant has or may be entitled to in the stock of any corporation, or in the debt of any corporation, transferable upon the books of such corporation; and it shall be the duty of the sheriff or other officer, in laying said attachment, to comply with the requirements contained in article XXIII, title "Corporations." of this Code, in relation thereto.

Execution against stock. §§ 277-287.

[Service of notice of an attachment upon two of the officers and directors, sufficient notice to corporation. *Boyd v. Canal Co.*, 17 Md. 195.

Corporations may proceed by attachment, the same as individuals, to collect debts. *Gordon v. Mayor*, 5 Gill, 241.

Notice to directors is notice to corporation, when. *Ins. Co. v. Shriver*, 3 Md. Ch. Dec. 381; *Gen. Ins. Co. v. U. S. Ins. Co.*, 10 Md. 517; *Boyd v. Canal Co.*, supra.]

## ARTICLE XXIII.

### Corporations.

#### *Miscellaneous Provisions.*

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2. Banking privileges not to be exercised unless expressly granted.  
3. Majority to govern.  
4. Certified copy of by-laws to be received as prima facie evidence.  
5. Accounts and annual statement of president and directors.  
6. General meeting of stockholders.  
7. Officers may be removed and others appointed.  
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#### *Formation of Corporations.*

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16. Class 3. Traffic in land, lumber, fruits, etc.  
17. Class 4. Insurance; live stock.  
19. Class 6. Manufacturing, ship building or mechanical.  
19a. Class 6a. Printing and publishing.  
20. Class 7. Mining.  
21. Class 8. Smelting.  
22. Class 9. Quarrying.  
23. Class 10. Operating for petroleum and other oils.  
24. Class 11. Telegraph and telephone.  
25. Class 12. Ocean navigation.  
26. Class 13. River navigation.  
27. Class 14. Warehousing.  
28. Class 15. Bridges and dry dock, etc., building.  
29. Class 17. Trust and guarantee companies.  
30. Class 17. Gas and electric light.  
31. Class 18. Turnpike, plankroad and passenger railways.  
32. Class 19. Stage and stage coaches.  
33. Class 20. Water.  
34. Class 21. Immigration.  
35. Class 22. Trafficking in patent rights.  
36. Class 23. Accident insurance.  
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39. Consolidation of two or more corporations.  
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#### *General Regulations.*

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45. Signers of certificate then incorporated.  
46. Certified copy of certificate to be evidence.

Sec. 47. Alteration or amendment, how to be made.

48. Fees of clerk for recording.
49. General provisions as to powers.
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52. To have a common seal.
53. To acquire and own property.
54. To appoint officers and agents.
55. To make by-laws.
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#### *Execution against Stock.*

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- Sec. 294. Who may issue preferred stock; how to be issued.

#### *Process.*

- Sec. 295. Foreign corporations liable to suit.
296. Process to be served upon whom.
297. Suits to be brought, where.
298. Service on non-resident officers, when allowable.
299. Judgment by default.
300. Creditor's bill against company debtor.
301. Name by which corporation may be sued.

#### *Taxation.*

- Sec. 302. Property not to be exempt from.

#### *General Applicability.*

- Sec. 303. This article applicable to all Maryland corporations.

Section 1. Any corporation may acknowledge any deed which such corporation has the power to make, by attorney appointed



by such corporation, under the seal thereof, and such appointment may be embodied in the deed.

Power to acquire and hold property. § 53. To have a seal. § 52. Penalty against corporation for transferring property after levy. § 282.

[Acknowledgment of mortgage by officer of corporation. Bldg. Assn. v. Brace, 51 Md. 508.]

§ 2. No corporation created, or to be created, and not expressly incorporated for banking purposes shall, by any implication or construction, be authorized to exercise banking privileges, or to issue any note, token or device, scrip or other evidence of debt, to be used as currency.

See Const., art. III, § 39. Savings bank may be incorporated. § 29, post.

[Purpose of section is to prohibit all corporations, except banks, from using paper for circulation as currency, and not from giving promissory notes, as evidences of debts. *Davis v. Building Union*, 32 Md. 294; but see *Duncan v. Md. Sav. Inst.*, 10 G. & J. 299; *Bank v. Katz*, 57 Md. 128.]

§ 3. When the corporate powers of any corporation incorporated under the laws of this State, are directed by its charter or certificate of incorporation to be exercised by any particular body, or number of persons, a majority of such body or persons, if it be not otherwise provided in the charter or certificate of incorporation, shall be a sufficient number to form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board, shall be valid as a corporate act.

Powers. §§ 49-56. Affairs to be managed by directors. § 57. Election to be by ballot. § 58. Directors declaring illegal dividend; penalty. §§ 67, 68.

[What may constitute quorum of directors. *Bank v. Ruff*, 7 G. & J. 448.

In the absence of proof to the contrary, where it appears from the minutes of a corporation that a meeting of trustees was held, business transacted, the presumption will be that a quorum was present. *Balle v. College*, 47 Md. 124.]

§ 4. A copy of any by-law of any corporation incorporated under the laws of this State, under its seal and purporting to be signed by the president, secretary or treasurer of the corporation, shall be received as prima facie evidence of such by-law in the courts of this State.

Powers to make by-laws. § 55. Certified copy of certificate evidence. § 46.

[Book of by-laws admissible as evidence. *Frank v. Morrison*, 58 Md. 423.]

§ 5. The president and directors of every corporation shall keep full, fair and correct accounts of their transactions, which shall be open at all times to the inspection of the stockholders or members; and they shall

annually prepare a full and true statement of the affairs of the corporation, which shall be certified to by the president and secretary and submitted at the annual meeting of the stockholders or members.

Books must show what property was taken for stock. § 62. Statement of condition to stockholders. § 71. Semi-annual statement of assets and liabilities. § 73.

[Failure of president to comply with this section will not release corporation or its stockholders from liability for corporate debts. *Weber v. Flekey*, 52 Md. 510.]

§ 6. General meetings of the stockholders of any corporation, incorporated under the laws of this State, may be called at any time, upon the requirement of stockholders entitled to vote a majority of the stock of said corporation, of which meeting not less than ten days' notice shall be given in a newspaper published in the county in which the principal place of business of said corporation is situated, and also in a newspaper published in the city of Baltimore; and when said principal place of business is situated in said city, then in two newspapers published therein; and if the president and directors refuse to call such meeting, the said stockholders so owning a majority of said stock may do so on giving notice as above set forth.

Majority to govern. § 3. Meetings of stockholders to increase or diminish stock. § 76. Notice of stockholders' meeting. §§ 80, 82. Meeting to order dissolution. § 265.

§ 7. At any general meeting of the stockholders, called as provided for in the preceding section, any president, director or directors of said corporation may, by a vote of a majority in interest of the whole number of stockholders, be removed from office, and another or others be appointed in the place of the person or persons so removed, to serve for the remainder of his or their term.

Majority to govern. § 3. Power to appoint and pay officers. § 54. Election of officers. §§ 58, 59, 60.

§ 8. (As amended April 7, 1892.) Whenever five or more stockholders of any private corporation created under the laws of this State, at least thirty days before an election for managers, directors or other officers of such corporation elected by the stockholders thereof, shall give notice in writing of their intention to canvass the votes, which may be given at the next election thereof, and shall deliver said notice, at the usual place of business of such corporation, to the president, cashier, secretary, treasurer, director or other principal manager of such company, it shall be the duty of the officers receiving such notice, immediately to communicate the

## Miscellaneous provisions; formation — G. L., Art. xxiii, §§ 9-14.

same by mail to all the stockholders of said corporation living in the State and living in other States, so far as their places of residence appear on the books of such corporation.

§ 9. Upon proof made to the judges of any such election of such notice having been delivered as aforesaid, by any five stockholders, such judges shall, before receiving the votes, require every stockholder offering to vote in person the stock of the corporation, to make an oath or affirmation that the stock which such person proposes and offers to vote in the election then to be held, is his sole and bona fide property, or belongs solely and bona fide to him and his partner or partners in trade, or is held by him as trustee, or in some fiduciary relation, to be specified in such oath, and that his right and title to the same has been fairly and bona fide, and not colorably and fraudulently created or acquired, and not with any intent to increase the number of votes which would otherwise be allowed to said stock, nor in any manner, directly or indirectly, to violate, avoid or evade the standard of voting, as fixed either by the charter of said company or its by-laws, and that the said stock, to the best of his knowledge, belief and information, or any interest he has therein, is not retained in his name or in that of his partner, on the books of said corporation, with any such intent, design or purpose, and that he does design in all respects and in good faith to comply with the charter of the said corporation and its regulations upon the subject of voting stock therein.

§ 10. Whenever such stock is owned by and stands in the name of any corporation or body politic, some officer thereof shall take the oath prescribed in the preceding section, and further declare, on oath, that he has full opportunity, from his official station in the corporation, to know the opinions and sentiments of a majority of the directors thereof, in relation to such stock, and that he represents them fairly in the premises.

[Corporation may invest in stock of another corporation. *Booth v. Robinson*, 55 Md. 419.

And may vote such stock at all meetings of stockholders. *Davis v. P. & L. Co.*, 77 Md. 35; s. c., 25 Atl. Rep. 982.

But this right may not be used to destroy another corporation. *Id.*; see, also, *Mfg. Co. v. The Okisko Co.*, 5 Md. 152; s. c., 1 Md. Ch. Dec. 392.]

§ 11. (As amended April 7, 1892.) If notice shall be given for a canvass of votes, as prescribed in section eight, then at the election with reference to which such notice shall be given, no person or body corporate shall vote by proxy on stock held in any private corporation unless the person, or in case of a body corporate the president, cashier, or some lawfully-constituted officer thereof, shall make oath before some person

authorized by the laws of Maryland, or by the laws of the State where the same shall be administered, to administer an oath to the same effect as required by section nine of this article, a certificate of which oath shall be produced, before the person or persons holding said election before any vote by proxy shall be received.

Elections to be by ballot. § 58.

§ 12. No person shall act as the director of any bank requiring that the directors thereof shall hold any number of shares therein, unless the said director, before he acts as such, shall make oath before some justice of the peace, that he is the sole and bona fide owner of the stock standing in his name on the books of said bank, and that the same has not been transferred to qualify him to serve as director therein.

§ 13. In all cases where the stock in any corporation in this State shall have been hypothecated or pledged by the owner thereof as security for the payment of any debt or loan, such person, upon exhibiting to the person holding any election in such corporation, a certificate in writing from the pawnee of said stock, that the same is held in pledge or by hypothecation, shall, until forfeiture, be deemed and taken to be the holder of such stock, and as such, entitled to vote the same; and every person holding stock in such corporation as executor, administrator, guardian or trustee, shall represent the shares of stock in his hands, and may vote accordingly as a stockholder at any election in such corporation.

### Formation of Corporations.

§ 14. Corporations may be formed in this State, under the provisions hereinafter set forth, by any five or more persons, citizens of the United States, and a majority of them citizens of this State, or if unnaturalized, residents of this State, making oath that they bona fide intend to become citizens of the United States without unreasonable delay, who may desire to form a body corporate or politic, for any of the following purposes:

[Corporation may be private, and yet charter contain provision of a purely public character. *University v. Williams*, 9 G. & J. 365.

Legislature intended this act to be a substitute for all existing general laws on the subject (see Const., art. III, § 48), but does not repeal charters of corporations previously existing. *Montel v. Coal Co.*, 39 Md. 164; *Webb v. Ridgely*, 38 id. 364.

Corporation must dwell in place of its creation, but may do business in other States. *Ins. Co. v. Langley*, 62 Md. 196.

Where a corporation is formed under the general law, compliance with provisions of the statute sufficient proof that person who signed the articles have accepted the same. *Glymont Co. v. Toler*, 80 Md. 278; s. c., 30 Atl. Rep. 278.

Neither directors nor majority of stockholders have power to make fundamental changes in charter, inconsistent with objects for which it was granted. *Id.*

Where a statute provides that the charter of a certain company shall be continued in full force for a period of thirty years, such statute operates merely to revive and extend the charter of the company, and does not create a new and distinct corporation. *Mining Co. v. R. R. Co.*, 81 Md. 28; s. c., 31 Atl. Rep. 698.]

§ 15. Class 2. For the creation and maintenance of mechanics' institutes, co-operative stores or societies, libraries, public reading or lecture-rooms, medical societies, public hotels, public baths, dairy associations and agricultural or horticultural societies, fairs or exhibitions, and companies for the packing of fruits, vegetables and other things; Provided, Such corporations are located in this State, and the property they possess or acquire is located therein.

§ 16. Class 3. For buying, selling, mortgaging, leasing, improving, disposing of, or otherwise dealing in lands in this State, or partly in this State, and partly beyond this State, and for the procuring and preparing for market, transportation and selling of lumber, timber, wood, trees, plants, seeds, fruits, roots or other products of land.

General power of corporations to acquire property. § 53. Corporation may acknowledge deeds. § 1.

§ 17. Class 4. For the formation of fire, life, marine, accident, cattle, live stock and other insurance companies, and all companies for receiving, weighing, sheltering, feeding and exposing for sale, cattle, sheep and hogs; Provided, That such companies shall have their principal office in this State; And provided the yards and scales of every company for receiving, weighing, sheltering, feeding and exposing for sale, cattle, sheep and hogs, shall be located either within the city of Baltimore or within a distance of not more than six miles from the limits thereof; And provided further, That all such cattle, sheep and hogs shall be weighed by or under the supervision of the State weighmaster, as now provided for by law; such weighing to be done at the yards and scales of such company.

§ 19. Class 6. For carrying on in this State any kind of manufacturing, ship-building, mechanical, industrial or chemical business, and for the sale, transportation, or other disposition of the products thereof. For manufacturing, furnishing and selling hot water or steam for motive power, heating, cooking or other useful applications in the streets and public and private buildings of any city, village or town in this State; and such corporation shall have the power to lay pipes or conductors for conducting hot water or steam through the streets, avenues, lanes, alleys, squares and highways in such city, village or town, with the consent of the municipal authorities of said city, town or village, and under such reasonable regulations and conditions as they may prescribe.

§ 19a. Class 6a. (Enacted March 19, 1890.) For the purpose of carrying on the business of printing, publishing or selling books, pamphlets or newspapers, or of carrying on the general business of a job printing office.

§ 20. Class 7. For conducting any kind of mining business in this State, and for selling or otherwise disposing of the products of said business where the principal office of said corporation is located in this State.

§ 20a. Class 7a. (Added April 6, 1894.) For conducting or carrying on in this State and elsewhere, any lawful wholesale or retail trading, commercial or mercantile business, where the principal office and place of business of the corporation are located in this State.

§ 21. Class 8. For washing, dressing, smelting and otherwise preparing for and bringing to market and selling the ores of all kinds of metals; Provided, Said corporations carry on their general operations in this State, and have their principal office therein.

§ 22. Class 9. For opening and working quarries of marble, slate or other economic minerals or mineral substances in this State, and for the manufacturing thereof in this State, and for the transportation or exportation and sale thereof.

§ 23. Class 10. For boring for, opening, using or refining petroleum, salt, or other mineral springs in this State, and for boring for, opening, using or refining in this State, other oils, where the principal office of said corporation is located in this State.

Taxation of such companies. See Acts of 1890, at pp. 41-43.

§ 24. Class 11. For constructing, owning or operating telegraph or telephone lines in this State, where the principal office of said corporation is located in this State, and for the transaction of any business in which electricity over or through wires may be applied to any useful purpose.

Taxation of such companies. See Act of 1890, at pp. 41-43.

§ 25. Class 12. For navigating the ocean by steam, sail or other ships or vessels, and transportation of goods and passengers therein, where the principal port of entry or departure thereof is in the United States, and the principal business office of said corporation is located in this State.

§ 26. Class 13. For navigating the waters of this and adjoining States by steam, sail or other boats or vessels, and for the transportation of goods and passengers therein, where the principal office of said corporation is located in this State.

§ 27. Class 14. For carrying on any forwarding or warehousing business in this State, and for the construction, owning, chartering or leasing of steamboats, wharves,

Formation for what purposes; consolidation — G. L., Art. xxiii, §§ 28-39a.

docks, roads, vehicles or other property required for the purpose of such forwarding or warehousing business, where the principal office of said corporation is located in this State.

§ 28. Class 15. For acquiring or constructing and maintaining, selling, leasing or otherwise disposing of, any bridge, pier, wharf, floating or dry dock, or marine railway, in this State where the principal office of said corporation is located therein.

§ 29. Class 16. For the formation of savings institutions, trust companies and guarantee companies.

Banking privileges exist only by special grant. § 2. Director of bank must be stockholder. § 12. Taxation of trust and guaranty companies. See Act of 1890, at pp. 41-43.

§ 30. Class 17. For the formation of gas light or electric light companies.

Taxation of such companies. See Acts of 1890, at pp. 41-43.

§ 31. Class 18. For the formation of turnpike and plankroad companies, and of passenger railway companies, outside of the limits of the city of Baltimore; but no passenger railway, constructed under the provisions of this article, shall exceed twelve miles in length.

[Power of State to annul franchise of plankroad companies. *Road Co. v. State*, 19 Md. 239. Liability of turnpike company for non-performance of duty. *Turnpike Co. v. Cassell*, 66 Md. 419; s. c., 7 Atl. Rep. 805; *Road Co. v. Crowther*, 63 Md. 558; s. c., 1 Atl. Rep. 279. May be sued, where. *Id.*]

§ 32. Class 19. For establishing and maintaining lines of stages and stage coaches for the conveyance of passengers and mails of the United States within this State.

§ 33. Class 20. For the purpose of supplying any city or town in this State with pure water.

[Fact that corporation formed for purpose of supplying city with pure water, diverted water of a certain stream from its customary channel prior to institution of condemnation proceedings, does not deprive corporation of right to condemn. *Moore v. W. & L. Co.*, 79 Md. 391; s. c., 29 Atl. Rep. 1933.]

§ 34. Class 21. For the formation of societies or associations for the promotion of immigration into this State.

§ 35. Class 22. For the acquiring, developing, improving, using, working or otherwise utilizing or disposing of any novelty, invention or process patented by the United States; and for the sale, lease or other disposition of articles manufactured under such patent.

§ 36. Class 23. For the formation of accident insurance companies on the assessment plan.

§ 37a. Class 25. (Added by L. 1898, ch. 163.) For the formation of fire patrol, property patrol, police patrol, land patrol and water patrol companies.

§ 38. Any company may be incorporated for any two or more of the purposes aforesaid, where, in the judgment of those forming said company the same may be conducted by one corporation, with advantage to its general interests.

Consolidation of two or more companies. §§ 39, 39a.

[Mining and manufacturing corporations may combine. *Basshor v. Dressel*, 34 Md. 503.]

§ 39. Any corporation incorporated under this article, or any corporation heretofore formed and now existing, the capital stock of which has been fully paid up, may unite with any other corporation incorporated under this article, the capital stock of which has also been fully paid up, where the said corporations have been originally incorporated in whole or in part for the same purpose, and may by such union form one new corporation; Provided, That a majority of the stockholders of each of the said corporations forming such union shall assent thereto. Such union or consolidation shall be made upon such terms and conditions as shall be agreed upon by the said corporations; and the said new consolidated corporation shall have such name and such capital stock as shall be agreed upon between the corporations parties thereto; and when such union or consolidation is made, a certificate of the said union and of the particulars thereof shall be executed by the said corporations, and be acknowledged and recorded as other certificates of incorporations are in this article directed to be acknowledged and recorded.

See § 38.

§ 39a. (Added April 7, 1892.) When the aforesaid certificate of union shall have been executed, acknowledged and recorded as provided in section 39 of this article, all the property and assets belonging to said former separate corporations of whatsoever nature and description, and all the powers and rights and all the debts and liabilities of said former separate corporations of whatsoever nature and description, shall upon such recording as aforesaid, be devolved upon said new consolidated corporation, and every devise or bequest in favor of either of the former separate corporations, and which said former separate corporations would have been capable of taking, shall devolve upon said new consolidated corporation, which shall be regarded as substituted by operation of law in the room and stead of said former separate corporation.

See §§ 38, 39.

## Certificate of incorporation — G. L., Art. xxiii, §§ 42-44.

**General Regulations.**

§ 42. Any five or more persons, citizens of the United States, and a majority of them citizens of this State, who may desire to form a corporation for any of the purposes hereinbefore referred to, shall make, sign, seal and acknowledge before some officer competent to take the acknowledgment of deeds, a certificate in writing in which shall be stated:

1. The names in full and places of residence of the applicants.

2. The proposed corporate name of the corporation, which shall always include the name of the county or city in which it may be formed.

3. The object or purposes for which incorporation is sought, the time of its existence, not to exceed forty years, and the articles, conditions and provisions under which the incorporation is formed; Provided, That the limitation as to the duration of existence of corporations formed under this article shall not apply to gaslight companies.

4. The place or places where the operations of the corporation are to be carried on, and the place in this State in which the principal office of the corporation will be located.

5. The amount of capital stock (if any) of the corporation.

6. The number of shares of stock (if any) and the amount of each share.

7. The number of trustees, directors or managers, and their names, who shall manage the concerns of the corporation for the first year.

Corporations must be formed under general laws. Const., art. III, § 54. Purposes of incorporation. §§ 14-28. Amendments to certificate. § 47. Powers. §§ 49-56. Forfeiture of franchises. §§ 255-263. Dissolution. §§ 264-276. Increase or reduction of stock. § 74. Existing corporation may incorporate under this section. §§ 81-84. All corporations subject to future legislation. § 85. Manufacturing corporation. § 85.

[An act or charter of incorporation is merely an offer until consummated by acceptance. *State v. R. R. Co.*, 12 G. & J. 400.

Presumption of law is that all requirements of charter have been complied with, where corporation has gone into action, and rights have been acquired under it, and this is the presumption against a subscriber, sued for his subscription. *Road Co. v. Creeger*, 5 H. & J. 122.

Every body politic not incorporated by a public law must show authority under which it acts as a corporation. *McKim v. Odum*, 3 Bl. 407. When called upon as defendant, its corporate capacity is admitted. Id. Three classes of corporations defined. Id.

A copartnership may be dissolved by some of its members becoming, as to some purposes as partnership, a body politic under an act of incorporation. *Cape Sable Co.'s case*, 3 Bl. 606.

It was the intention of legislature that Act of 1868 should be a substitute for all existing general corporations laws. *Montel & Co. v. Coal Co.*, 39 Md. 164; *Strauss v. Heiss*, 48 Id. 292.

Defects in certificate of incorporation cured by legislative recognition of the corporation. *Baschor v. Stebbins*, 34 Md. 503.

Conditions precedent to corporate existence. *Ins. Co. v. Hart*, 31 Md. 59; *Lyons v. R. R. Co.*, 32 Id. 18.

Not necessary for all subscribers to certificate to make required acknowledgment, provided five or more do so. *Hughes v. Antietam, etc., Co.*, 31 Md. 316. The particular business to be carried on need not be stated in certificate. Id. Acknowledgment by president and directors prior to recording, not necessary. Id. Patent defects in certificate. Id.

Where a corporation is created under a law which requires certain acts to be done before it can be considered in esse, those acts must appear to have been done, in order to establish corporate existence. *Lord v. Building Assn.*, 37 Md. 329.

When requirements of section 42 are complied with, and certificate is recorded, the associates become possessed of corporate franchises as effectually as if same had been by direct grant. *Hager v. Cleveland*, 36 Md. 476.

Corporation created by special act may reorganize under general law. *Sprigg v. Tel. Co.*, 46 Md. 67.

Legislature has power to amend, by special act, a charter obtained under the general law. *Koch v. R. R. Co.*, 58 Md. 603.

Legislative act reorganizing existence of corporation cures all defects in original certificate. *Koch v. R. R. Co.*, 75 Md. 222; s. c., 23 Atl. Rep. 463.

A charter can be accepted and corporation organized only within State creating it. *Smith v. Mining Co.*, 64 Md. 86; s. c., 20 Atl. Rep. 1632.]

§ 43. When said certificate is executed, it shall be the duty of the persons executing the same to submit it to one of the judges of the judicial circuit, within which the principal or any other office of said corporation is, under said certificate, to be located, if it shall be located in one of the counties of this State, or to one of the judges of the supreme bench of Baltimore city, if the principal office of said corporation shall be located in Baltimore city, in order that the said judge may determine whether the said certificate is in conformity with the law; and such determination, when certified by the said judge as required by the next succeeding section, shall be conclusive evidence that such certificate does conform to the law.

[*Goodman v. Jedijah Lodge*, 67 Md. 125; s. c., 9 Atl. Rep. 13; 13 Id. 627.]

§ 44. If the said judge shall so determine, he shall certify his said determination upon the said certificate, which shall thereupon be recorded in the office of the clerk of the circuit court for the county in which the principal office of said corporation shall, by the terms of said certificate, be located, if it shall be located in one of the counties of this State, or in the office of the clerk of the superior court of Baltimore city, if the principal office of said corporation shall be located therein; and the said certificate shall be recorded in a book provided for that special purpose.

Fees for recording. § 48.

[The authority of a judge to certify to the formality of articles of incorporation is a question of jurisdiction, and, as such, is a proper subject

## Certificate of incorporation; powers — G. L., Art. xxiii, §§ 45-51.

of inquiry by the courts when legal existence of the corporation is in issue. *Oler v. R. R. Co.*, 41 Md. 583.]

§ 45. When the said certificate shall have been recorded, the persons who have signed and acknowledged the same, and their successors shall, according to the objects, purposes, articles, conditions and provisions in said instrument contained, become, and be a body politic and corporate, in fact and in law, by the name stated in such certificate.

[Person may recover for work done for corporation before certificate was recorded, if work be afterward accepted. *Grape S. & V. Co. v. Small*, 40 Md. 335.]

Pre-requisites must be complied with before privileges may be exercised. *Grumbine v. State*, 60 Md. 355.

When certificate has been recorded, the associates become possessed of corporate franchises as effectually as if same had been by direct grant. *Hager v. Cleveland*, 36 Md. 476.]

§ 46. A copy of such certificate, or of any amendments thereto, or of any paper relating to corporations, which is required by law to be recorded, when certified to be a true copy by the clerk of the court in whose office the same is recorded, under the seal of his office, shall be evidence in all legal proceedings, and in all the courts of this State.

Certified copy of by-laws evidence. § 4.

§ 47. If any alteration or amendment of the articles or provisions of the charter of any of said corporations, shall be made by the authority of the corporation, such alteration or amendment shall be made known, acknowledged and recorded in the same manner as prescribed in sections 42, 43 and 44 of this article; and after the said alteration or amendment shall be recorded, the same shall be taken to be a part of the said charter or instrument, as if the same had originally been made a part thereof.

Increase or reduction of capital stock. §§ 74-78. Change in par value. §§ 79, 80.

§ 48. The usual fees for equal or similar services shall be received by the respective clerks under this article, and all the expenses of procuring the charter of incorporation and recording the same, shall be borne by the parties respectively applying therefor; and the date and fact of recording shall be indorsed by the clerk on every original instrument.

§ 49. Every corporation incorporated under this article shall have the following powers and be subject to the following general regulations, except in cases where the special provisions relating to any particular corporation are inconsistent with the said general regulations.

Only powers conferred may be exercised. § 56. Remedies for abuse of powers. §§ 255-263. Banking privileges not to be exercised. § 2.

[The possession of power by a corporation to do an act is of itself possession of right to provide for doing of that act by agents. *Mayor v. Howard*, 6 H. & J. 383.]

Corporation has no power to do what it is inhibited by its charter from doing. *Albert v. Bank*, 2 Md. 159.

The creation of a corporation for a specified purpose implies a power to use the necessary and usual means to effect that purpose. *Road Co. v. Young*, 1 Md. 476; *Davis v. Building Union*, 32 Md. 295.

Acceptance of additional grants and powers to existing corporation presumed from exercise of powers, or other unequivocal acts, but such presumption may be rebutted. *Lyons v. R. R. Co.*, 32 Md. 18; *New, etc. Co. v. Georges, etc., Co.*, 37 id. 537; see, also, *Smith v. Mining Co.*, 64 id. 86; s. c., 20 Atl. Rep. 1032.]

§ 50. Any such corporation shall have power —

First. To have succession by its corporate name for the period prescribed by law or by the certificate evidencing its incorporation where the said certificate is in accordance with law.

Requirements of certificates. § 42.

[In contracts, it is sufficient that name of corporation be so expressed as to distinguish it from others. *Road Co. v. Creeger*, 5 H. & J. 122.]

In actions by or against corporations, correct statement of corporate name is more strictly required than in contracts with them. *Id.*

Change of name of corporation by legislature does not abate a suit in equity brought by such corporation. *Thomas v. School*, 7 G. & J. 369. Objection that corporation sues by wrong name is matter of abatement, and cannot be taken on trial of the general issue. *Bank v. Orme*, 3 Gill, 443.

A misnomer in a grant to a corporation does not avoid the grant. *Vansant v. Roberts*, 3 Md. 119.

Omission of part of corporate name in assignment of mortgage. *Chilton v. Brooks*, 71 Md. 445; s. c., 18 Atl. Rep. 863.]

§ 51. Second. To sue and be sued, complain and defend in any court of law or equity.

Attachment against corporate stock. Art. IX, § 18. Certified copy of by-law evidence. § 4. Of certificate. § 46. Proceedings against corporation for misuse or abuse of powers. §§ 255-263. Suit for dissolution of corporation. §§ 264 et seq. Pending suit of dissolved corporation continued. § 276. Execution against stock. §§ 277-287. Process against corporations. §§ 295-301. Proceedings for failure to pay taxes. §§ 88a-88j. Suits by and against foreign corporations. § 297.

[Corporation may be charged in actions *ex delicto* as well as *ex contractu*. *McKim v. Odom*, 3 Bl. 407.]

Corporation can only be called on to answer by its proper name. *Binney's case*, 2 Bl. 99.

Foreign corporation may sue in courts of Maryland. *Id.*; *McKim v. Odom*, *supra*.

When charter of corporation is legally null and void, corporation is no longer suable at law. *Bank v. Bank*, 10 G. & J. 346.

Responsibility of steamboat company for transporting escaped slave with notice. *Nav. Co. v. Hungerford*, 6 G. & J. 291.

Corporation should be sued in county where located. *Cape Sable Co.'s case*, 3 Bl. 606.

Suits against insolvent corporation. *Id.* An action of assumpsit may be sustained against a corporation. *Id.*

Expiration of charter during pendency of suit by corporation can only be availed of by a plea of *darrein continuance*. *Agnew v. Bank*, 2 H. & G. 479.

Rules of construction in actions by a corporation. *Road Co. v. Creger*, 5 H. & J. 122.

Ordinarily stockholder not a competent witness in suit brought by corporation. *Bank v. Ridgely*, 1 H. & G. 325.

The general issue being pleaded in an action by a corporation, the plaintiffs are not bound to show that they are a body corporate. *Whittington v. Bank*, 5 H. & J. 489; *Agnew v. Bank*, *supra*.

Many cases where single incorporator has, by bill in equity, called corporation to account for his share of rents and profits. *Binney's case*, 2 Bl. 99. Also where corporation has asked relief against mismanagement and frauds of its officers. *Id.*

Proceedings in equity against insolvent corporation admissible in suit against stockholder to recover unpaid installments. *Hall v. Ins. Co.*, 5 Gill, 484.

A plea, by a corporation, to the jurisdiction of a Maryland court, that the corporate property lies partly in another State, or that its corporate existence is derived, in part, from a charter of another State, is not tenable. *State v. Ry. Co.*, 18 Md. 193.

To maintain its cause, corporation must show that it has been effectually created. *Lord v. Essex Assn.*, 37 Md. 320.

An action may be maintained against corporation for malicious prosecution, libel, false imprisonment, assault and battery and false representation. *Carter v. Mach. Co.*, 51 Md. 290. And for fraud or other wrong of an agent. *R. R. Co. v. Bank*, 60 Md. 36.

But to make corporation answerable for acts of its officer or agent, they must have been acting within the scope of their authority. *Tolchester, etc., Co. v. Steinmeier*, 72 Md. 313; s. c., 20 Atl. Rep. 188.

Turpike company may be sued, where. *Road v. Crowtner*, 63 Md. 558; s. c., 1 Atl. Rep. 279.

Maryland Statutes of Limitations, bar to action against stockholder, when. *Atrill v. Huntington*, 70 Md. 191; s. c., 16 Atl. Rep. 651.

All actions in regard to rights and interests of a corporation must, as a general rule, be brought by the corporation itself. *Davis v. Gemmell*, 70 Md. 356; s. c., 17 Atl. Rep. 259.]

§ 52. Third. To make and use a common seal and alter the same at pleasure.

[Where seal of a corporation is affixed by proper officer, proof of it is unnecessary. *B. & B. Co. v. Ins. Co.*, 3 Md. 305.

Acts of a corporation may be evidenced by writing without seal, and may be inferred from other facts and circumstances, same as an individual. *Bank v. Ridgely*, 1 H. & G. 326; see, also, *Mfg. Co. v. Okisko Co.*, 5 Md. 152.

When corporation may contract without seal. *Kennedy v. Ins. Co.*, 3 H. & J. 367.

A bill filed by a corporation need not be under its corporate seal. *Creek Co. v. Detmold*, 1 Md. Ch. 371.

The answer of a corporation under its corporate seal has same force and effect as evidence as answer of an individual not under oath would have, and no more. *C. & I. Co. v. Wingert*, 8 Gill, 171; *Bouldin v. Mayor*, 15 Md. 18.

That corporation bound itself by contract under corporate seal, how proved. *Zihlman v. Glass Co.*, 74 Md. 303; s. c., 22 Atl. Rep. 271. Sealing is the essential part of execution of contract by corporation. *Id.*

A bill in equity may be answered by a corporation only under its corporate seal. *Williams Co. v. Baking Co.*, 38 Atl. Rep. 990.]

§ 53. Fourth. To acquire by purchase or in any other manner, and take, receive, hold, use, employ, manage, mortgage, dispose of, or in any manner not inconsistent with law, deal with any property, real, personal or mixed, and situated in or out of this State, which may be necessary or proper to enable said corporation to carry on the operations or fulfill the purposes named in its certificate of incorporation, and generally to do every other act or thing, not inconsistent with law, which may be necessary or proper to promote the objects, designs and purposes for which said corporation was formed.

Eminent domain. Const., art. III, § 49. Execution of deed. § 1. No loan to be made to stockholders. § 69. Taxation of property. § 302, and art. LXXXI. See note to § 56.

[In general corporation may alien all or any of its property at pleasure. *Bluney's case*, 2 Bl. 99.

Corporation may transfer property to trustee for benefit of creditors, or may prefer one creditor by transfer. *State v. Bank*, 6 G. & J. 295; *Bank v. Elliott*, *id.* 333.

Where charter requires assent of three-fourths of stockholders to make a contract, or mortgage, it will be deemed void unless such assent be shown. *Cape Sable Co.'s case*, 3 Bl. 606.

Rules of construction in contracts, leases, bonds or grants by corporation. *Road Co. v. Creger*, 5 H. & J. 122.

Stockholder loses his individuality so far as the transactions of the corporation are concerned. *Albert v. Bank*, 2 Md. 159.

Corporation may borrow money to conduct its affairs without express authority. *Booth v. Robinson*, 55 Md. 419. And power to give mortgage is necessary incident unless expressly restrained by the charter. *Id.*; *S. B. & B. Co. v. Ins. Co.*, 3 Md. 305.

Assignment of mortgage by corporation, how made. *Chilton v. Brooks*, 71 Md. 445; 18 Atl. Rep. 868.

A contract between the State and a corporation for benefit of a county may be relinquished by legislature, whether the county objects or not. *State v. R. R. Co.*, 12 G. & J. 399.

Deeds of corporate property by directors must be held to have been ratified by stockholders, when. *Stokes v. Detrick*, 75 Md. 256; s. c., 23 Atl. Rep. 846.

Liability of new corporation in accepting deed from corporation about to expire. *Id.*

In legal contemplation, it is not a matter of concern to this State whether property shall accumulate in the hands of foreign corporations or not; this is a question to be regulated by each State for itself. *Vansant v. Roberts*, 3 Md. 119.

Foreign corporations, especially telegraph companies, may do business and hold property within this State. *Day v. Tel. Co.*, 66 Md. 354; s. c., 7 Atl. Rep. 608.

Mortgagor allowed set-off against building association. *Hennighausen v. Tischer*, 59 Md. 583.

Director not competent to become purchaser of corporate property, when. *Hoffman, etc., Co. v. Cumberland, etc., Co.*, 16 Md. 456.

Restrictions imposed by charter of a corporation upon amount of property which may be held, cannot be taken advantage of collaterally, but only by the State in a direct proceeding instituted for that purpose. *Hanson v. Sisters*, 79 Md. 434; s. c., 32 Atl. Rep. 1052.

Corporation may, without express authority, borrow money and issue notes for the payment thereof. *Heironimus v. Sweeney*, 34 Atl. Rep. 523.]

## Corporate powers; directors — G. L., Art. xxiii, §§ 54-57.

§ 54. Fifth. To appoint a president of the company from among the directors, trustees or managers, and to appoint such officers and agents as the business of the corporation shall require; to allow them a suitable compensation, require security for the faithful discharge of their duties, and regulate the tenure of office of the said officers.

Accounts of officers. § 5. Removal of. § 7. Officer to vote stock. § 10. Trustees and directors. §§ 57-59. Failure to elect officers not to dissolve corporation. § 60. Service of process on non-resident officer. § 298.

[Liability of corporation to individual stockholders for fraud or mismanagement of officers. *Whittington v. Bank*, 5 H. & J. 489.

Corporation may be bound by acts of agent though such acts are not reduced to writing. *Bank v. Ridgely*, 1 H. & G. 325; *Bank v. Bate-man*, 7 H. & J. 104; *R. R. Co. v. Bastian*, 15 Md. 494; *Eckenrode v. Chem. Co.*, 55 id. 51.

Bond of an officer is limited to duration of corporation. *Bank v. Ridgely*, supra.

A vote or resolution appointing an agent need not be entered on the minutes, but may be inferred from the permission, or acceptance of his services. *Burgess v. Puc*, 2 Gill, 254. Recording of officer's bond not essential to its validity, unless it be so expressly declared. *Id.*

Persons acting publicly as officers of a corporation are presumed to be rightfully in office. *Id.*; *B. & B. Co. v. Ins. Co.*, 3 Md. 305.

Officers de facto presumed to be succeeded by officers de jure. *Smith v. Erb*, 4 Gill, 437.

President or directors may recover for services rendered to corporation. *Mining Assn. v. Meredith*, 49 Md. 389.

Person signing a note as an officer of a corporation may bind himself personally. *Powder Co. v. Sinsheimer*, 48 Md. 411.

Corporation not bound where officer acts for himself. *Winchester v. R. R. Co.*, 4 Md. 231.

Corporation may be bound by agent not regularly appointed. Appointment and authority of agent may be implied. *Eckenrode v. Chem. Co.*, supra.

To recover for work done for corporation under contract with it, express authority of president to make such contract need not be proved. *Grape Sugar Co. v. Small*, 40 Md. 395.

The president and general manager of a corporation held not to have power, without the consent of directors, on insolvency of corporation, to transfer assets to satisfy debts of one creditor. *Hadden v. Linville*, 38 Atl. Rep. 37.]

§ 55. Sixth. To make by-laws, not inconsistent with law, for the management of its property, the regulation of its affairs, and for the transfer of its stock, if any such stock there be; for the forfeiture of stock not paid for, and for the disposition of the proceeds thereof; for the calling of regular, special and general meetings of the directors, managers and trustees of said corporation, and fixing the place or places where the same shall be held, and to provide for all other matters which may be regulated by by-laws, and from time to time to repeal, amend or re-enact the same; but every such by-law, and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company, duly called for that purpose, shall only have force until the next annual meeting of the company, and in de-

fault of confirmation thereof, shall, from that time only, cease to have force. The stockholders, or members of the corporation, may, at any general meeting, make by-laws, which shall not be rescinded by the directors, managers or trustees.

Certified copy of by-laws evidence. § 4. Stock made transferable by by-laws. § 63.

[By-laws need not be in writing. *Bank v. Ridgely*, 1 H. & G. 325.

A stockholder having recognized and admitted validity of by-laws, not permitted to question mode of their adoption. *Morrison v. Dorsey*, 48 Md. 461.

A by-law providing that a stockholder desiring to sell his stock shall give a written notice, that the other stockholders may have the option to purchase, is an invalid restraint on alienation. *Bloede Co. v. Bloede*, 34 Atl. Rep. 1127.

A by-law creating a lien on a member's share for debts due the corporation is valid except against a bona fide purchaser. *Grafflin Co. v. Woodside*, 39 Atl. Rep. 413.]

§ 56. No corporation shall possess or exercise any corporate powers, except such as are conferred by law, and such as shall be necessary to the exercise of the powers so acquired.

Specific powers. §§ 49-55.

[Must look solely to charter for outline of corporate powers. *Duncan v. Savings Inst.*, 10 G. & J. 308.

Corporation can make only such contracts as are necessary, directly or indirectly, to effect the object of its creation. *Nav. Co. v. Dandridge*, 8 G. & J. 248.

And in an action to enforce a contract against it, it may deny its competency to make such contract. *Id.*

Power of agent of corporation discussed. *Id.*; see *Gist v. Drakely*, 2 Gill, 330; *Abbott v. Packet Co.*, 1 Md. Ch. Dec. 542; *Plank R. Co. v. Young*, 12 Md. 476.

Party may recover money paid on ultra vires contract with corporation. *Hospital v. Foreman*, 29 Md. 524.

Contract with corporation before it came into existence cannot be enforced. *Ins. Co. v. Hart*, 31 Md. 59; *Coal Co. v. Georges, etc., Co.*, 37 id. 537; see *Grape, etc., Co. v. Small*, 40 id. 395.

A corporation is the creature of law, and is incapable of exerting any other faculties than those conferred by instrument of its creation. *Mayor, etc., v. R. R. Co.*, 21 Md. 50; *R. R. Co. v. Glenn*, 28 id. 287; *Md. Hosp. v. Foreman*, 29 Md. 524.

The powers of a corporation comprehend not only express grants, but all means necessary for exercise of powers conferred. *Davys v. Building Union*, 32 Md. 295; *State v. Coal Co.*, 46 id. 9.]

§ 57. The stock, if any, property and concerns of any corporation, for whose creation provision is made in this article, shall be managed by such number of trustees, directors or managers as its by-laws or charter shall prescribe, said number to be not less than four nor more than twelve, who shall respectively be citizens of the United States, and a majority of them citizens of this State; or if unnaturalized residents of this State, shall make oath that they intend to become citizens of the United States without unreasonable delay; and who shall, except the first year, be annually elected by the stock-



Directors; elections; subscriptions — G. L., Art. xxiii, §§ 58-63.

holders, where there are such, or by the shareholders or members, where there are no stockholders, at such meeting, time and place, and after such notice as shall be directed by the by-laws of the corporation; and the election shall, except in cases otherwise provided for herein, be made by such of the stockholders, shareholders or members, as the case may be, who shall attend for that purpose, either in person or by proxy; and where no other notice is provided for by the by-laws, public notice of the time and place of holding such election shall be published not less than ten days previous thereto, in a newspaper printed nearest to the place where the principal office of said corporation in this State shall be located.

Director of bank must be stockholder. § 12.  
Directors not to declare dividend, when. §§ 67, 68.  
Directors to wind up affairs. § 272.

[There must be positive affirmative proof to render directors personally liable for mismanagement or fraud. *Booth v. Robinson*, 55 Md. 419.]

§ 58. In all corporations heretofore formed or hereafter to be formed under the general laws of this State, or under any special law, having a capital stock, and in which there are stockholders, all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in said corporation, and the persons receiving the greatest number of votes shall be trustees, managers or directors; but no share of stock shall be voted by any stockholder unless all instalments have been paid thereon which may have been called for on any part of the stock of said corporation. And in the case of all other corporations the mode of electing trustees, managers or directors, shall be regulated by the charter or by-laws of said corporation; Provided, however, That nothing herein contained shall prevent any such corporation so formed, should it elect so to do, to provide by its charter or by-laws for minority representation in the election of trustees, managers or directors.

Majority shall govern. § 3. Elections. §§ 6-13.

[Manipulation of stock to increase number of votes at stockholders' meeting will be prevented by injunction. *Campbell v. Poultney*, 6 G. & J. 94. See *Webb v. Ridgely*, 38 Md. 364; *Baile v. College*, 47 id. 124.

Books of corporation constitute the only evidence as to what stockholders are entitled to vote at election of directors. In re Election of Cedar Grove Cemetery Co., 39 Atl. Rep. 1024.]

§ 59. When any vacancy shall happen among the trustees, directors or managers, by death, resignation or otherwise, it shall be filled for the remainder of the year or other term, in such manner as may be provided by the by-laws of the said corporation.

§ 60. If it shall happen at any time that an

election of trustees, directors or managers shall not be made on the day designated by the by-laws of the said corporation, the corporation, for that reason, shall not be dissolved; but it shall be lawful on any other day to hold such election in such manner as may be provided by the by-laws, and all acts of trustees or managers shall be valid as against such corporation until their successors shall be elected.

§ 61. Subscriptions to the capital stock of such of said corporations as have capital stock, may be made in land or other property at a valuation agreed upon between the corporation and the subscriber, where the said property so subscribed shall be such as it is proper that the said corporation shall own for the advancement of the purposes for which it was incorporated, but such subscriptions shall not be otherwise received, nor shall they be so received unless the same shall have been previously authorized by the stockholders assembled in general meeting, pursuant to a call to consider the propriety of receiving the said subscription and of fixing the terms upon which it shall be received.

Calls. § 70. Increase and reduction of stock. §§ 74-78. Par value changed. §§ 79, 80. Execution against stock. §§ 277-287. Preferred stock. § 294.

[This section does not authorize leasehold interest to be considered as payment. *Blasbrough v. Dressel*, 34 Md. 503; see *Baile v. College*, 47 id. 124; *Weber v. Fickey*, 52 id. 510.

Where promoters of a corporation, by false devices, against shares of stock to be issued as full paid, as if in consideration of property acquired by the corporation, when, in fact, the property was not paid for by the shares, and the same are assigned to the promoters, who also secured bonds by the first mortgage on the estate of a corporation, then such promoters cannot recover as directors of a corporation and first mortgage bondholders without paying the amount due by them to the company as stockholders, if the rights of a vendor of the property to the corporation are thereby put in jeopardy. *Hooper v. Trust Co.*, 81 Md. 539; s. e., 32 Atl. Rep. 505.]

§ 62. Where property of any kind is received by the authority of the stockholders in general meeting as aforesaid, in payment for stock, the books of the company shall be so kept as to show at all times fully what property was received for the said stock, at what value and the number of shares of the capital stock issued for the same; in all other cases money only shall be considered as payment of a subscription to any part of the capital stock.

[See *Baile v. College*, 47 Md. 124; *Weber v. Fickey*, 52 id. 510.]

§ 63. The stock of any corporation created under this article shall be deemed personal estate, and shall be transferable as shall be prescribed by the by-laws of the corporation; and no shares shall be transferable until all

previous calls thereon shall have been paid in, or shall have been declared forfeited for the non-payment of the calls thereon.

See § 55. Stock liable to execution. § 277. Preferred stock. § 294. Taxation of stock. Art. LXXXI, §§ 2, 84, 85, 88a, 88f, 96, 131.

[It is no objection to recovery of unpaid installments, from person to whom stock has been transferred with his assent, that transfer was made without consideration. *Hall v. Ins. Co.*, 5 Hill, 484.

Rights and liability of transferee discussed. *Id.* See *Bend v. Bridge Co.*, 6 H. & J. 128.

Trustees permitting transfer of stock without knowledge of owner. *Cohen v. Gwynn*, 4 Md. Ch. D. 357.

Transfer of its own stock directly to a corporation will operate as a merger of stock so transferred. *Williams v. Mfg. Co.*, 3 Md. Ch. Dec. 418.

Where stocks are sold before dividends are declared, latter pass, by the sale and transfer, to purchaser. *Abercrombie v. Riddle*, 3 Md. Ch. Dec. 320.

Liability of corporation to ward for illegal transfer of its stock by guardian. *Baltimore v. Norman*, 4 Md. 352.

Where a bank permits its stock to be transferred under power of attorney, it takes the risk of the validity of such power. *Chew v. Bank*, 14 Md. 200.

Shares of stock are personal property, the title to which passes by transfer and delivery. If transfer is not made on books of company, transferee has an equitable title. *R. R. Co. v. Sewell*, 35 Md. 258.

Transfer of stock as a gift *inter vivos*, what is necessary. *Brick Co. v. Mah*, 65 Md. 93; s. c., 3 Atl. Rep. 286.

Assignment and delivery of stock without proper transfer passes equitable title only. *Noble v. Turner*, 69 Md. 519; s. c., 16 Atl. Rep. 124; *Gemmel v. Davis*, 75 Md. 546; s. c., 23 Atl. Rep. 1032.

Transfer of stock of testator to executor; liability of corporation. *Marbury v. Ehlen*, 72 Md. 206; s. c., 19 Atl. Rep. 648.

No lien exists at common law in favor of corporation upon stock to satisfy a debt due it from a shareholder; and unless created by statute, charter or usage, does not exist at all, and corporation cannot prevent transfer of stock. *Gemmel v. Davis*, *supra*. But corporation may withhold payment of a dividend, regarding it as a set-off. *Id.* Rights and duties of pledgee of stock. *Id.*

Liability for assessments when seller of stock fails to have transfer of sale entered on the books. *Hutzler v. Lord*, 64 Md. 534; s. c., 3 Atl. Rep. 891.

A transfer of corporate stock indorsed on the certificate, and a delivery of the certificate, vests in the purchaser an equitable title. *Bloede Co. v. Bloede*, 34 Atl. Rep. 1127.

A by-law providing that a stockholder desiring to sell shall give a written notice, that the other stockholders may have the option to purchase, is an invalid restraint on alienation. *Id.*

Where the power to transfer stock is shown to the corporation, it is not bound to inquire whether the transferee is attempting a fraud. *Hughes v. Bank*, 38 Atl. Rep. 936.

Measure of corporation's duty stated as to protecting its stockholders from unauthorized transfers. *Id.*

§ 64. All the stockholders of any such corporation shall be severally and individually liable to the creditors of the corporation of which they are stockholders, to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by the corporation, until the whole amount of the capital stock fixed and lim-

ited by the corporation shall have been paid in, and a certificate thereof made and filed, as prescribed in the following section, which certificate may, however, be filed at any time after thirty days, mentioned in said section; but no stockholder shall be individually liable to the creditors of such corporation, except to the amount of his, her or their unpaid subscription to the capital stock; and the capital stock so fixed and limited shall be paid in, one-fourth thereof in one year, one-fourth in two years, one-fourth in three years, and one-fourth, or the balance, in four years from and after the incorporation of said company, or such corporation may be dissolved; Provided, however, That it shall be lawful for the trustees, directors or managers of any such corporation to collect and enforce the payment of all subscriptions to the capital stock, as other debts are collected after notice being given, as required by section 70 of this article; and if suit shall be brought by the trustees, directors or managers of any such corporation, against all delinquent stockholders for the full amount of unpaid subscriptions within four years from the incorporation of said company, such corporation shall not be dissolved; And provided, furthermore, That the provisions of this section shall not apply to any homestead or building association.

See Const., art. III, § 39. Certain stockholders not liable. § 66. List of stockholders to be kept. § 72. Dissolution not to affect individual liability. § 271.

[Stockholders cannot set off debts of corporation to them against claims of other creditors. *Matthews v. Albert*, 24 Md. 527. If stockholders have paid for their stock, and subsequently become creditors of the company, they are clothed with equities equal to other creditors. *Id.* Stockholders not liable for debts contracted subsequent to their parting with their stock. *Id.* Creditor holding stock as collateral security not personally liable. *Id.*

A single creditor of a corporation may enforce liability of a stockholder by an action at law. *Norris v. Johnson*, 34 Md. 485.

Extent of liability measured by par value of stock at time debts were contracted. *Id.* No averment of notice to stockholder that debt was contracted by corporation necessary in declaration. *Norris v. Wrenschall*, 34 Md. 492. Liability under above section is not in nature of a penalty, but is an obligation arising *ex contractu*. *Id.* Assessment of damages after judgment by default. *Id.*

Right of stockholder to invoke aid of court of equity to compel payment of unpaid subscriptions. *Flery v. Emmert*, 36 Md. 464.

The remedy by forfeiture and sale of stock of delinquent subscriber does not exclude right of action for amount of subscription. *Hughes v. Man. Co.*, 34 Md. 316.

In an action under this section, books of corporation not admissible in evidence. *Hager v. Cleveland*, 36 Md. 476; *contra*, *Weber v. Fickey*, 47 *id.* 196. Transfer of stock does not avoid liability. *Hager v. Cleveland*, *supra*.

Provisions of this section as applicable in a court of equity as in a court of law. *Emmert v. Smith*, 40 Md. 123. And one creditor may pursue his action at law, although another creditor has filed a bill in equity. *Garling v. Baechtel*, 41 Md. 305.

Stockholder compelled to pay a debt of the corporation, entitled to contribution from other

## Certificate of paid-up stock; dividends; loans — G. L., Art. xxiii, §§ 65-70.

stockholders. *Weber v. Fickey*, supra. Action of one stockholder, who is a creditor, against another. *Id.* Debt must have been contracted while defendant was a stockholder. *Id.*

Plea that stock was paid up before debt was contracted is a complete defense. *Strauss v. Heiss*, 48 Md. 292.

Unpaid subscriptions a trust fund for the benefit of creditors. *Rider v. Morrison*, 54 Md. 429; *Crawford v. Rohrer*, 59 id. 604. But not in the hands of a bona fide purchaser of the stock, without notice. *Brant v. Ehlen*, 59 Md. 1. Brokers may assume liabilities of stockholder. *McKim v. Glenn*, 66 Md. 479; s. c., 8 Atl. Rep. 130. See, also, *Basshor v. Forbes*, 36 Md. 154; *Booth v. Campbell*, 37 id. 522; *Weber v. Fickey*, 52 id. 500; *Musgrave v. Morrison*, 54 id. 162; *Frank v. Morrison*, 55 id. 406; *Hambleton v. Glenn*, 72 id. 351; s. c., 20 Atl. Rep. 121.

If a party is induced to subscribe for shares of stock upon the faith of certain representations contained in the prospectus issued by the company, which representations are false, and within a reasonable time after a discovery of the fraud, and before the insolvency of the company, he notifies the company that he repudiates the contract, these facts constitute a valid defense to an action to recover the subscription. *Fear v. Bartlett*, 81 Md. 435; s. c., 32 Atl. Rep. 322.

The doctrine that unpaid subscriptions to capital stock are a trust fund for the benefit of its creditors does not apply so as to prevent a defrauded shareholder from rescinding his contract before proceedings in insolvency have been instituted against the company. *Id.*

§ 65. The president and a majority of the trustees, directors or managers of such corporation, within thirty days after the payment of the last instalment of the capital stock, as fixed and limited in the certificate of incorporation, shall make a certificate stating the amount of the capital stock so fixed and paid in, and of all property received in payment for any of said subscriptions, and the extent to which said payments have been so made in property, which certificate shall be signed and sworn to by the president; and he shall, within thirty days thereafter, file the same with the clerk of the court in which the certificate of incorporation of said corporation was recorded, to be by said clerk recorded.

Semi-annual statement of condition. § 73.

§ 66. No person holding stock in any such corporation, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholders of such corporation; but the person pledging the stock shall be considered as holding the same, and shall be liable as stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or ward or person interested in such trust fund, would have been if he had been living and competent to act, and held the same stock in his own name.

Personal liability. § 64, and note.

[Liability of corporation to *caveat que trust* on stock held by trustees. *Albert v. Bank*, 2 Md. 159.]

§ 67. If the trustees, managers or directors of any such corporation shall declare and pay any dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, or would diminish the amount of the capital stock, they shall be jointly and severally liable for all the debts of the corporation then existing, and also for all that shall thereafter be contracted, while they shall respectively continue in office, even although the whole amount of the capital of said corporation has been paid in.

Increase and reduction of capital stock. § 74.  
Of par value. § 79.

[Officers of corporation have no right to relieve the stock of a particular member from forfeiture of its dividends. *Bank v. Blays*, 4 H. & J. 335. Dividend "payable in common stock of the company," is income and not capital. *Thomas v. Gregg*, 78 Md. 545; s. c., 28 Atl. Rep. 565.]

§ 68. If any of the trustees, directors or managers of such corporation shall object to declaring such dividend, or to the payment of the same, and having voted against the declaration thereof, shall at any time before the time fixed for the payment of the same, record a certificate of their objection in writing with the clerk of the court in which the original certificate of incorporation is filed, they shall be exempt from the liability imposed in the preceding section.

§ 69. (As re-enacted April 7, 1898.) No loan of money shall be made by any such corporation to any stockholder therein; and if any such loan shall be made to any stockholder the officer or officers who shall make it or who shall assent thereto shall, in the event of the insolvency of such corporation, be jointly and severally liable for all the debts of the corporation contracted before the making of said loan to the extent of double the amount of, any loss arising out of said loan; this section shall not, however, apply to any building or homestead association or any association for the loan of money on real or personal property, or to any savings institution or other corporation receiving money on deposit or authorized by its charter to receive money on deposit.

§ 70. The trustees, directors or managers of any corporation created under this article, and having a capital stock, may call in and demand from the stockholders, respectively, all sums of money by them subscribed, at such times and in such payments and instalments as the trustees, directors or managers may deem proper, under the penalty of forfeiting the shares of stock subscribed, and all previous payments made thereon, if payment shall not be made by the stockholders within ninety days after a personal demand, or after a notice requiring such payment, published in a newspaper printed

nearest to the place where the principal office of the corporation is located.

Subscriptions to stock. § 61. Individual liability. § 64, and note.

[Corporation can enforce subscription against person to whom subscription has been assigned. *Bend v. The Susq., etc., Co.*, 6 H. & J. 128.

Certain irregularities no defense to payment of subscription to stock. *Hollman v. Turnpike Co.*, 9 G. & J. 462; s. c., 8 Id. 75.

As a general rule, strict compliance with its charter as to organization must be shown by a corporation seeking to enforce payment of subscription to its stock. *Maltby v. R. R. Co.*, 16 Md. 422.

The remedy against delinquent subscribers by forfeiture and sale of their stock does not exclude the right of action for the amount of their subscription. *Hughes v. Antietam Co.*, 34 Md. 316. Written notice by mail not a compliance with statute. Id. Unless otherwise provided, no valid assessment can be made until all stock is taken. Id. Subscriber has no right to withdraw subscription without consent of all cosubscribers. Id. Unless it was obtained by fraud. Id.

Conditional subscription to stock is a continuing offer until withdrawn, which is final and absolute when accepted. *Taggart v. R. R. Co.*, 24 Md. 563.

The mere fact of subscribing for stock does not constitute subscriber a stockholder. *Busey v. Hooper*, 35 Md. 15.

But a promise to take shares is an express promise to take them on terms and conditions set forth in subscription paper. Id.; *Hughes v. Antietam Co.*, supra.

An action will lie against corporation for refusing to issue certificates of stock to party entitled. *R. R. Co. v. Sewell*, 35 Md. 238. And the action may be brought by a subscriber or his assignee. Id.

Right of stockholder to invoke aid of court of equity to compel payment of unpaid subscriptions. *Fiery v. Emmert*, 36 Md. 464.

Subscriptions to additional, unauthorized stock, cannot be enforced. *Oler v. R. R. Co.*, 41 Md. 583.

In the absence of express provision to the contrary, valid calls cannot be made until all shares are taken. *Scarlett v. Acad. of Music*, 43 Md. 203; *Hager v. Cleveland*, 36 Id. 476.

Estoppel of stockholder, in action to recover subscription, to deny irregularities of by-laws and proceedings of corporation. *Morrison v. Dorsey*, 48 Md. 461.

Demand or notice by corporation is a condition precedent to the right to sue for calls or assessments. *Roofing Co. v. Michael*, 54 Md. 65.

No fiduciary relation, other than that of debtor and creditor, created by subscription to stock. *Morrison v. Savage*, 56 Md. 142.

Unpaid subscriptions are a trust fund for the benefit of creditors, and any arrangement by which stock is to be nominally paid for will be treated as a sham. *Crawford v. Rohrer*, 59 Md. 604. And creditor may proceed in equity to enforce unpaid subscriptions, whether directors have made an assessment or not. Id.

A court may have power and jurisdiction to assess unpaid subscriptions to stock of insolvent corporation. *Glenn v. Williams*, 60 Md. 93.

Discharge in bankruptcy, under United States law, no bar to action for subscription to stock. *Glenn v. Howard*, 65 Md. 40; s. c., 3 Atl. Rep. 895. Nor discharge under Insolvency Law of Maryland. *Glenn v. Chabough*, 65 Md. 65; s. c., 3 Atl. Rep. 902.

Payment for, and not subscription to only, necessary to make subscriber the owner of stock. *R. R. Co. v. Hambleton*, 77 Md. 341; s. c., 26 Atl. Rep. 279.

Subscription binding from time of making it. *Webb v. R. R. Co.*, 77 Md. 32; s. c., 26 Atl. Rep. 113. And is not within the Statute of Frauds. Id. Subscription to stock may be repudiated if obtained through fraud and subscriber is not guilty of laches. *Savage v. Bartlett*, 78 Md. 561.

When induced to subscribe to stock by fraud of the corporation, subscriber may rescind subscription before insolvency of the corporation. *Fear v. Bartlett*, 32 Atl. Rep. 322.]

§ 71. When any person or persons owning five per cent. of the capital stock of any corporation formed under the provisions of this article shall present to the treasurer or chief finance officer thereof, a written request for a statement of the affairs of said corporation, it shall be the duty of such treasurer or chief finance officer to make a statement of the affairs of said corporation under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the person or persons who presented the said written request to the said treasurer or chief finance officer within twenty days after such presentation, and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said company demanding an examination thereof; if such treasurer or chief finance officer, as the case may be, shall neglect or refuse to make or deliver such statement as aforesaid, he shall forfeit and pay to the person presenting said written request the sum of fifty dollars, and the further sum of twenty-five dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having jurisdiction over the person of such defaulting officers and cognizance of said suit.

Semi-annual statement. § 73.

[A statute of New York (1875, ch. 611, § 21), imposing liability upon officers of corporation for making false report, cannot be enforced in Maryland, nor can an action be maintained in Maryland upon judgment recovered in New York, for such penalty. *Attrill v. Huntington*, 70 Md. 191; s. c., 16 Atl. Rep. 651.]

§ 72. It shall be the duty of every corporation incorporated under this article to cause a book to be kept by the treasurer or secretary thereof, containing the names of all persons alphabetically arranged, who are or shall have been, within three years, stockholders of said corporation, and showing their places of residence, the number of shares held by them respectively, and the time when they respectively became the owners of such shares, which book shall, during the usual business hours of every business day, be open for the inspection of stockholders or creditors of the corporation at the principal office of the said corporation in this State; and every officer or agent of any such corporation who shall neglect or refuse to exhibit the same, shall be deemed guilty of a misdemeanor, and the corporation shall forfeit and pay to the party injured, a penalty of fifty dollars for every such neg-

## Increase or decrease of capital — G. L., Art. xxiii, §§ 73-79.

lect or refusal, and all the damages resulting therefrom to be recovered in an action of debt before a justice of the peace.

[A corporation, by issuing certificate of stock, declares to the world that the person in whose name it stands is the holder of the stated number of shares, and is liable to any person injured thereby. *Bank v. Mayor*, 63 Md. 6.]

§ 73. It shall be the duty of every corporation formed under this article, having a capital stock, to cause to be made, in the first week in January and July in each and every year, a full and particular statement of the affairs of said company, verified by the oaths or affirmations of its president and treasurer, or chief finance officer, which statement shall consist of a particular account of its assets and liabilities in minute details, calculated to the time of making up the statement as aforesaid; each of the said statements so made up shall be recorded in a book kept in the principal office of the said corporation in this State.

Stockholder may obtain statement. § 71.

§ 74. Any corporation formed under this article, or under any special law, and having a capital stock, may increase or diminish the same to any amount that may be deemed sufficient and proper for the purposes of the corporation, by complying with the provisions of the following sections; but every corporation incorporated under any special law, which shall so increase or diminish its capital stock, shall remain subject in other particulars to all the limitations contained in this charter, or in any supplement thereto; and every corporation incorporated under this article which shall so diminish or increase its stock, shall remain subject in other particulars to the provisions of this article.

Change of par value. § 79.

[Liability under section 64 applicable as well to increased stock as to the original. *Booth v. Campbell*, 37 Md. 522.]

§ 75. Before any corporation shall be entitled to diminish the amount of its capital stock, under the provision of the preceding section, if the amount of its debts and liabilities shall exceed the amount of the capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced, so as not to exceed such diminished amount of capital.

Insolvent corporation not to declare dividends. §§ 67, 68.

§ 76. Whenever any corporation shall desire to call a meeting of the stockholders, for the purpose of increasing or diminishing the

amount of its capital stock, the directors, managers or trustees shall publish a notice, signed by at least a majority of them, in a newspaper published in the county or counties, or city where the principal office of said corporation is located, if any shall be published therein, for at least four successive weeks, and shall send or deposit a written or printed copy thereof in the post-office, addressed to each stockholder or member of such corporation, at his usual place of residence, at least three successive weeks previous to the date fixed for the holding of such meeting. The said notice shall specify the object of the meeting, the time and place where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital.

§ 77. If at any time and place specified in said notice, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, the said stockholders or the said members, as the case may be, shall organize by choosing one of the trustees, directors or managers, chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy, and the vote of at least two-thirds of all the shares of the stock shall be necessary to an increase or diminution of the amount of its capital stock.

§ 78. If, on canvassing the votes, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital of said corporation, a certificate of the proceedings showing a compliance herewith, the amount of the capital actually paid in, and the amount to which the capital stock shall be increased or diminished, shall be made out and signed by the chairman, and such certificate shall be sworn to by the president, and recorded in the office of the clerk of the superior court of Baltimore city, if the principal office of said corporation shall be therein located, or in the office of the clerk of the circuit court for that county in which said principal office is located.

§ 79. Where the par value of the stock of any corporation created under the general laws of the State of Maryland, has been, or may hereafter be, reduced by losses, it shall be competent for the stockholders thereof, in general meeting assembled, to establish the true value of the stock of such corporation; and they may also provide for calling in and cancelling the whole or any part of such stock, and issuing other stock instead thereof, at such par value as they may decide on, so as to represent the amount of the true value so established of the stock of such corporation; and they may also provide for creating and disposing of additional stock, so as to make up the entire value of the stock of the corporation, to the amount

designated in the certificate of corporation, or for a greater or less amount, as may be decided by the stockholders.

Change in capital stock. §§ 74-78.

§ 80. Notice of such meeting of stockholders shall be given in the manner required by section 76 of this article; and the proceedings thereafter shall be similar to those prescribed in sections 77 and 78.

§ 81. Any corporation heretofore formed under the general laws of this State, or under any special act, for any purpose for which a corporation may be formed under this article, may cause itself to be incorporated under this article; Provided, The directors, managers or trustees thereof give notice to the stockholders thereof, required by section 76 of this article, containing the particulars therein set forth in the manner therein provided; And provided, That at the meeting called in pursuance of such notice, or at any adjourned meeting, there be present, stockholders representing, in person or by proxy, not less than two-thirds of all the shares of the stock of the said corporation, and the meeting be organized in the manner prescribed in section 77 of this article.

Mode of Incorporation. §§ 42 et seq. Manufacturing corporation may change or extend its business. § 143. Corporations may consolidate. §§ 39, 39a.

§ 82. The notice for the assembling of a meeting of the stockholders of any corporation, formed under the general laws of this State, or under any special act, for any purpose for which a corporation may be formed under this article, which is required to be given by section 81 of this article, in case where it is proposed that such corporation shall be incorporated under this article, shall be deemed and taken to have been and to be a corporate act, and a sufficient compliance with all the requirements of said section 81, relating to said notice, in all cases where the said notice has been or may be signed by the persons who were or may be directors, managers or trustees of such corporation at the time of signing such notice, or by a majority of them; Provided, The said notice contained or shall contain the particulars directed by section 81 to be specified in said notice, and shall have been or shall be published and communicated to the stockholders of the said corporation in the manner directed by the said section 81.

§ 83. If at such meeting or any adjourned meeting of said stockholders, a sufficient number of votes as aforesaid shall be given in favor of causing said corporation to be incorporated under this article, then the said meeting or any adjourned meeting, representing, as aforesaid, two-thirds of all the shares of the said stock, shall determine the number of shares into which the capital stock of the new company shall be divided,

and the rule of the apportionment thereof, and the persons who shall be entitled to hold the same, and also the name by which said new corporation shall be known; and a certificate shall be made out and signed by the president of said meeting, showing the compliance by said corporation, and by the said meeting of stockholders, with the requirements of this article in that behalf; and the said certificate shall also show the proposed name of the new corporation, which shall always include the name of the county or city in which it may be formed, the former name of said corporation, the objects or purposes for which the new corporation is sought, the terms of its existence not to exceed forty years, and the articles, conditions and provisions under which the incorporation is formed, the place or places of business where the operations of the corporations are to be carried on, and the place in this State in which the principal office of the corporation will be located, the amount of the capital stock of the corporation, the number of shares, and the amount of each share, and the number of trustees, directors or managers who shall manage the concerns of the corporation for the first year.

§ 84. The said certificate shall be signed and sworn or affirmed to by the chairman of the said meeting, and shall be also signed by the president of the said corporation, and attested by its seal, and shall be thereupon submitted to judicial inspection, as required by section 43 of this article, and shall be certified and recorded as required by section 44 of this article; and thereupon the said corporation shall be a body corporate, in fact and in law, under the name set forth in the said certificate, and shall be subject to all the provisions and entitled to all the powers and privileges conferred by this article, so far as the same are applicable to the said corporation; and the former charter of said corporation shall be deemed to be thereupon surrendered, and all the property and assets belonging to the said former corporation, of whatsoever nature and description, and all the debts and liabilities of the said former corporation, of whatsoever nature and description, shall, upon such recording as aforesaid, be devolved upon the said new corporation, which shall, for this purpose, be regarded as substituted by operation of law, in the room and stead of said former corporation; and all pending proceedings at law or in equity, on behalf of or against said former corporations, may be amended at the instance of either party, so that the said new corporation may be substituted as plaintiff or defendant, as the case may require, in lieu and in place of the old corporation.

§ 85. Every corporation formed under the provisions of this article, shall be subject to any and all provisions and regulations which may hereafter, by any change in or amendments of the laws of this State, be made applicable to such corporation.

Foreign corporations; manufacturing companies — G. L., Art. xxiii, §§ 109a-109e, 143.

### Foreign Corporations.

§ 109a. (Enacted April 9, 1898; L. 1898, ch. 270.) Every corporation incorporated by or under the laws of the United States, or of any State or territory of the United States other than the State of Maryland, or of any foreign country, except telephone, banking, insurance and railroad companies, electric light or construction companies, and oil or pipe line companies, now doing business in the State of Maryland, or who shall desire to commence business in this State, shall before transacting business in this State, either through an individual agent or agents or through the agency of any corporation, organized under the laws of this State, or before opening or continuing any office for the transaction of any business in this State, first file in the office of the secretary of State of Maryland, accompanied by a deposit fee of twenty-five dollars, a duly certified copy of the charter, certificate or act of incorporation, under which it claims the powers to transact business as a corporation, together with a sworn statement from the president or other chief executive officer of such corporation, under its official seal, setting forth the amount of its capital stock authorized by law, and the amount actually issued, the amount of its assets and liabilities, the character of the business to be transacted in this State, designating the place or places of its principal office or offices and the name or names of its agent or agents to reside in this State, with the place or places of their residence, upon legal process issued out of any court of this State, may at any time be served in any action, at the suit of the State of Maryland, or of any county or incorporated city or town of this State, or of any citizen or citizens of this State, or of any corporation organized under the laws of this State, which said charter, certificate or act of incorporation, and sworn statement as aforesaid, when received by the secretary of State, shall be recorded at length by him in a well bound book to be kept for that purpose, and a copy or copies thereof under the hand and seal of the secretary of State shall be receivable in evidence in any suit at law or in equity, in any of the courts of this State by or against such foreign corporations, for the purpose of proving the existence or act of incorporation of such foreign corporation as fully as its charter duly certified would do, and also all other facts set forth therein.

§ 109b. (Enacted April 9, 1898; L. 1898, ch. 270.) At the time of receiving said certified copy of said charter, certificate or act of incorporation, together with the sworn statement, duly executed as required herein, together with the deposit fee of twenty-five dollars, the secretary of State shall issue to such corporation his certificate under his hand and the seal of his office, setting forth that said corporation has complied with the

requirements of this act, that its business is such as may be lawfully carried on by a corporation incorporated under the general laws of this State, and that it is entitled to continue or to commence business in this State, as the case may be.

§ 109c. (Enacted April 9, 1898; L. 1898, ch. 270.) Any person or officer of such corporation who shall presume to act as agent or employe of any such foreign corporation, or to open or continue an office for the transaction of the business of any such foreign corporation, before the provisions of this act have been fully complied with, and before said corporation shall have procured the aforesaid certificate from the secretary of State, shall forfeit and pay to the State of Maryland the sum of one hundred dollars for each and every day he may act as such agent or employe, or may occupy such office for the transaction of such business, and it shall be the duty of the State's attorney for the city or county in which such business is transacted, or is proposed to be transacted, to prosecute for and recover such penalty; Provided, That agents or officers of foreign corporations doing business in this State at the date of the passage of this act shall not be held liable to the penalties herein prescribed until on and after the first day of July, 1898.

§ 109d. (Enacted April 9, 1898; L. 1898, ch. 270.) No such foreign corporation shall be permitted to maintain any action, either at law or in equity, in the courts of this State, until the provisions of this act shall have been complied with; Provided, That in the case of such corporations doing business in this State at the date of the passage of this act, this section shall not apply until on and after the first day of July, 1898.

§ 109e. (Enacted April 9, 1898; L. 1898, ch. 270.) Upon the application of any person interested, it shall be the duty of the secretary of State to furnish copies of such charters, certificates or acts of incorporation and sworn statements for which he shall be entitled to demand and receive from the person so applying the usual fees for transcribing the same, and he shall account quarterly to the comptroller for the deposit fees received by him under the provisions of this act, less the costs and expenses of recording the same.

### Manufacturing Companies.

§ 143. Any corporation formed under this article for manufacturing purposes, may change or extend its business to any other manufacturing business, subject to the provisions and liabilities in this article prescribed, in reference to such corporations; and whenever any such corporation shall desire to change or enlarge its business, it shall take such steps and proceed in all respects as is in sections 76, 77, 78, 79, 80 and 81 of this article provided in reference to the increase or diminution of the capital stock

of corporations; and if the assent of two-thirds of all the holders of shares of stock in the said corporation shall be obtained to the said proposed change, in the manner set forth in the said sections of this article, then upon the making out and recording, in the manner therein directed, of a certificate showing a compliance with all of the said provisions and preliminaries, and setting forth the business to which the business of said corporation has been changed or enlarged, then the business which said corporation may carry on thenceforth, shall be that to which it has been thus changed or enlarged; and the company shall be entitled to all the privileges and provisions and be subject to all liabilities of this article.

#### Remedies for Abuse, Misuse and Non-use of Corporate Powers.

§ 255. Whenever the attorney-general of the State, or the State's attorney for the city of Baltimore, or for any county in this State, shall be authorized by the governor to institute proceedings against any corporation incorporated under the laws of this State, to ascertain whether such corporation has been guilty of such misuse, abuse or non-use of its corporate powers and franchises, as by law would authorize and make proper the forfeiture of its charter, corporate powers and franchises, the attorney-general or State's attorney so authorized, shall file in the court hereafter designated, a petition in the name of the State, setting forth fully and in detail the alleged abuse, misuse or non-use, by reason whereof the said forfeiture is sought; and upon the filing of such petition, the court in which it is filed, or any judge thereof, shall lay a rule requiring the said corporation to show cause, within such time as the judge may deem proper, why a decree of forfeiture should not issue as prayed in said petition; a copy of which rule and of the petition shall be served on the said corporation by a day to be therein limited, which shall be served as other process against such corporation is directed to be served.

[Proceedings for forfeiture of franchise for non-user or misuser must be instituted for that purpose by the government granting it. It cannot be attacked incidentally or collaterally. *Canal Co. v. R. R. Co.*, 4 G. & J. 1. Such proceedings must be by *scire facias* or *quo warranto*. 1d. General subject of forfeiture discussed. 1d.; see, also, *Bank v. Bank*, 10 G. & J. 346; *Regents v. Williams*, 9 id. 365; *Hamilton v. R. R. Co.*, 1 Md. 553; *Road Co. v. State*, 19 id. 239; *Taggart v. R. R. Co.*, 24 id. 563; *Coal Co. v. C. & I. Co.*, 37 id. 537; *Lord v. Building Assn.*, id. 320; *Booth v. Campbell*, id. 522; *Powder Co. v. Sinsheimer*, 46 id. 315; *State v. Coal Co.*, id. 5; *Dramatic Club v. State*, 74 id. 297; s. c., 22 Atl. Rep. 68. Change of venue not allowed in proceedings under this section. 1d.

So long as charter exists, property of company cannot be taken from them upon the allegation that it was acquired by an abuse of their chartered privileges. *Hamilton v. R. R. Co.*, supra.

Rights of minority stockholders. *Mottu v. Primrose*, 23 Md. 482; *Davis v. Gemmell*, 73 id. 530; s. c., 21 Atl. Rep. 712. Will be protected by court of equity, when. *Davis v. Power & Light Co.*, 77 Md. 35; s. c., 25 Atl. Rep. 982; *Shaw v. Davis*, 78 Md. 308; s. c., 28 Atl. Rep. 619.]

§ 256. The said corporation, by the day named in said order, unless further time be granted by the court, shall file an answer to such petition, fully setting forth all the defenses upon which it intends to rely on resisting such application, which shall be verified by the affirmation or affidavit of some officer of the said corporation.

§ 257. The petitioners may thereupon plead to or traverse all or any of the material averments set forth in the said answer, and the said defendant shall take issue or demur to said plea, or traverse within five days thereafter.

§ 258. If issue or issues be joined on such proceedings, the same shall stand for trial at such time as the court shall direct; and the said issue or issues shall be tried by a jury if either party desire it; otherwise they shall be heard and determined by the court. If, from the findings of the jury or upon consideration and determination of the case by the court, the court shall be of opinion that legal cause of forfeiture has been shown, and the public interests require that the said forfeiture should be declared, a decree of forfeiture shall be entered; and the charter of said corporation shall thereby be annulled and vacated, and all its corporate franchises and powers shall cease, and henceforth be void; and the court shall thereupon appoint a receiver or receivers of the estate and assets of said corporation, in the same manner and with like powers, as provided in sections 268 and 269 of this article, in reference to dissolution of corporations on bill filed therefor on their own motion.

§ 259. If any corporation, upon whom the aforesaid petition and rule to show cause have been served, shall neglect to file an answer to the petition at the time appointed by the said court, the court shall thereupon proceed to hear the said application *ex parte*, within five days thereafter; and if it shall be of opinion that good cause of forfeiture is shown, it shall proceed forthwith to decree the same as is provided in the preceding section.

§ 260. If the court, either upon a hearing *ex parte*, as provided in section 259, or upon a hearing after answer, as provided in sections 257 and 258, shall be of opinion that no cause of forfeiture has been shown, or that the public interests do not demand that such forfeiture should be decreed, even though legal cause therefor has been shown, it shall dismiss the petition and award costs in favor of the corporation proceeded against, in its discretion; and if the court shall determine that legal cause of forfeiture has been shown, it may, in its discretion, before passing a final decree of forfeiture, pass orders requiring the said corporation, within



Abuse, etc., of powers; dissolution — G. L., Art. xxiii, §§ 261-264.

a time to be therein fixed, to remedy the grievance complained of, and may suspend the passage of the final decree of forfeiture until the time so fixed, and may afterwards refuse to pass such decree, if the grievance shall have been remedied by the time so fixed.

§ 261. The petition for forfeiture, hereinbefore mentioned, shall be filed in the circuit court for the county in which the certificate of incorporation of said corporation was filed, if said corporation shall have been incorporated under the laws requiring the filing of such certificate, or under this article; and in the case of all other corporations such petition shall be filed in the county in which either the principal office of said corporation was last located, or in which the principal business of said corporation was last carried on; but if the corporation to be proceeded against has filed the certificate of incorporation in Baltimore city, or if not incorporated under the laws requiring such certificate to be filed, the said corporation had its principal office last in said city, or had there last carried on its principal business, then and in such cases the said petition shall be filed in the superior court of Baltimore city.

§ 262. From any judgment or determination of the court had on petitions filed for forfeiture under this article, either party may appeal to the court of appeals, subject to such regulations and provisions relating to the taking and prosecution of said appeals as shall be prescribed by the said court of appeals.

§ 263. The governor of this State shall have power, upon application in writing made to him by any citizen thereof, in the exercise of his own discretion, to direct the attorney-general, or State's attorney for any county in this State, or for the city of Baltimore, to file a bill in the circuit court of Baltimore city, or in the circuit court for any county, in the name of the State, against any corporation incorporated under the laws of this State, for the purpose of restraining, by injunction, any such corporation from assuming or exercising any franchise, liberty or privilege, or transacting any business not allowed by the charter, certificate or amended certificate of incorporation of said corporation, or not by law allowed to be assumed or exercised by said corporation; and in the same manner, and by like authority, a bill may be filed to restrain any individuals from exercising any corporate rights, privileges or franchises not granted to them by any law of this State; and such bill, when filed against a corporation, shall be filed in the circuit court of Baltimore city, if the principal office or place of business operations of said corporation shall be located therein, or in the circuit court for the county in which the principal office or place of the business operations of said corporation shall be located; and if the said bill

is filed against any individuals, it shall be filed in the city or county in which some one of the individuals sought to be restrained may reside; and upon the filing of any such bill, the court in which it shall be filed shall have power to issue the injunction either before or after hearing, and under and on such terms as it may prescribe, and generally shall have and exercise all the powers of a court of equity over the subject-matter of said bill; and all provisions of the laws of this State, relating to the granting, continuing or dissolving of injunctions in other cases, and providing for appeals to the court of appeals, which may be applicable, shall apply to proceedings under this section.

#### Dissolution of Corporations.

§ 264. (As amended April 6, 1894.) Whenever any corporation in this State shall have been determined by legal proceedings to be insolvent, or shall be proven to be insolvent by proof offered under any bill filed under the provisions of this section, it shall be deemed to have surrendered its corporate rights, privileges and franchises, and may be adjudged to be dissolved after the hearing, according to the practice of courts of equity in this State, upon a bill filed for that purpose in the circuit court of Baltimore city or in the circuit court No. 2 of Baltimore city, if the principal office of the corporation is located therein, or in the circuit court of any county, if the principal office or place of business of said corporation be therein located, or if the certificate of its incorporation be recorded therein; and such bill may be filed by any stockholder, shareholder or creditor of said corporation, or by the attorney-general of the State of Maryland, or by the State's attorney of the city or county in which the principal office of said corporation is located. But this section shall not apply to any railroad company chartered by this State.

#### Proceedings for forfeiture. §§ 255-263.

[A corporation, by the very nature of its existence, is subject to dissolution by a surrender of its franchises, and by a forfeiture of them for misuser or non-user. *Turnpike Co. v. State*, 19 Md. 239.

Prior to Act of 1888 (Code, art. XLVII, § 15), corporation not subject to insolvent laws. *Mach. Co. v. Speed*, 72 Md. 22; s. e., 18 Atl. Rep. 863. See *Frank v. Morrison*, 58 Md. 423.

Above section, as amended, construed. *Barton v. Fraternal Alliance*, 36 Atl. Rep. 658.

Averment in answer to a bill dissolving a corporation on the ground of insolvency, held not an admission of insolvency. *Id.*

In a suit dissolving an alleged insolvent corporation, heard on a bill and answer, a denial of insolvency will not avail if the admissions of the answer show insolvency. *Id.*

In the absence of statute, equity cannot dissolve a corporation. *Id.*

Evidence held to show no cause for extending time for presenting claim against an insolvent corporation, though petitioners were non-residents. *Abraham v. Trust & Deposit Co.*, 37 Atl. Rep. 646.]

§ 264a. (Enacted April 4, 1896.) Whenever any corporation mentioned in section 264 of this article other than railroad companies chartered by this State, shall have been determined or proven to be insolvent, as in said section 264 stated, all payments, conveyances and assignments of the money, property, debts or claims of said corporation and all preferences, howsoever made by it or by any of its officers on its behalf which would be void or fraudulent if the same had been made by a natural person who had become an insolvent under article 47 of the Code of Public General Laws, shall, to the like extent and with like remedies, be fraudulent and void when made by such corporation or by any of its officers on its behalf, and whenever any such corporation shall have been adjudged to be dissolved as provided in the next preceding section of this article, all of its property and assets of every description shall be distributed to the creditors of said corporation in the same manner that the property and assets of an insolvent debtor are distributed under the provisions of article XLVII of the Code of Public General Laws, but no discharge shall be granted to the said corporation, and the receiver of such corporation shall have the same power and authority to maintain suits and proceedings, to set aside preferences and void or fraudulent transfers and payments, conveyances and assignments by said corporation or by any of its officers on its behalf in the same manner and to the same extent as the permanent trustee of an insolvent debtor has under article XLVII of the Code of Public General Laws, in reference to preferences and void or fraudulent transfers, payments, conveyances and assignments, when made by a natural person who has become an insolvent debtor, and the date of the filing of the bill against such corporation, upon which it may be dissolved, shall be taken and treated for the purpose of determining the validity of preferences and for all other purposes as the date of the filing the petition in insolvency by or against a natural person.

§ 265. Whenever the directors, trustees or managers of any corporation, or a majority of them, shall, for any reason, deem it beneficial for the interests of the stockholders or others interested in said corporation, that the same shall be dissolved, they shall call a general meeting of the stockholders, shareholders or members of the corporation, at such time and place, and after such notice as the by-laws of said company shall prescribe for that purpose; and if at such general meeting a majority in interest of all the stockholders in any corporation having a capital stock, or a majority of the shareholders or members in other class of corporations, shall, by their votes, declare their wish that said corporation shall be dissolved, a bill for its dissolution shall forthwith be filed, in the name of said corporation and

on its behalf, in the circuit court of Baltimore city, if its principal office or place of business be in said city, or in the circuit court for the county in which its principal office or place of business may be situated.

Proceedings for forfeiture, §§ 255-263; see § 274, note.

[Winding up corporation by legislative enactment, *Bank v. Beaton*, 7 C. & J. 421.

Receiver may maintain action to recover unpaid balance on stock subscription, *Stillman v. Dougherty*, 44 Md. 280.

Also a trustee, *Glenn v. Williams*, 60 Md. 93. Corporation may be virtually extinguished by all stock being owned by one, *Bellona Company's case*, 3 Bl. 442.

One person becoming sole owner of all the stock of a private corporation, may conduct the business as a private individual, without corporate formalities, *Swift v. Smith*, 65 Md. 428; s. c., 5 Atl. Rep. 534.

Neither directors nor majority of stockholders have power, upon dissolution of corporation, to sell its property to another corporation and compel shareholders to take stock in that company, *Glymont v. Toler*, 80 Md. 278; s. c., 30 Atl. Rep. 651.]

§ 266. Every such bill shall contain a statement of the reasons why the dissolution of the said corporation is prayed for and sought; and there shall also be filed with it—

First. A full and true inventory of all the assets of such corporation, and of all the books, securities, and vouchers relating thereto.

Second. A true account of the capital stock of such corporation, and a list of all the stockholders, their residences, and the number of shares belonging to each, the amount paid on each of said shares, and the amount still due.

Third. A statement of all the incumbrances on the property of the corporation, and a full list of all its creditors and their respective residences, and the amount due to each. All of the said statements shall be verified by the oath or affirmation of either the president, treasurer, secretary, or some other chief officer, or of some stockholder of the said corporation.

[*Frank v. Morrison*, 58 Md. 440.]

§ 267. Upon the filing of said bill, accompanied by the aforesaid papers, the court shall pass an order requiring all persons interested in such corporations, to show cause, if any they have, why such corporation should not be dissolved, on or before a certain day to be named in said order, which order shall be published for such time as the court shall direct, in some newspaper published in the county, or city of Baltimore, as the case may be, in which such court is held; and upon any answer being filed to the said bill, by any creditors or stockholders of such corporation, the court may authorize evidence to be taken, on application of the plaintiffs or defendants, in the manner usual in courts of equity.

[*Frank v. Morrison*, 58 Md. 440.]

## Dissolution — G. L., Art. xxiii, §§ 268-273.

§ 268. If the court shall, upon consideration of the bill, or of the bill, answers and proof, if any answers have been filed or proof taken, be of opinion that the corporation is insolvent, or that for any reason a dissolution of the said corporation will be beneficial to the stockholders, and not injurious to the public interests, a decree shall be entered dissolving the said corporation, and appointing one or more receivers of its estate and effects, and such corporation shall thereupon be dissolved; any of the directors, trustees, managers or other officers, or any of the stockholders of any corporation, may be appointed its receivers, or such other person or persons as the courts may select.

[Quere, are the debts of corporation extinguished by dissolution of charter? *Agnew v. Bank*, 2 H. & G. 479; *Bank v. Bank*, 10 G. & J. 355.]

It is not against public policy to appoint a receiver over the property of corporations, *State v. Ry. Co.*, 18 Md. 193.

But courts exercise the power with great circumspection, *Davis v. Power & Light Co.*, 77 Md. 35; s. c., 25 Atl. Rep. 982.

Minority stockholders in dissolved corporation not entitled to have receiver appointed, when, *R. R. Co. v. Cannon*, 72 Md. 493; s. c., 20 Atl. Rep. 123.

See *Frank v. Morrison*, 58 Md. 440.

When the acts of the officers of a corporation are fraudulent, illegal or ultra vires, any stockholder is entitled to ask for the protection of the court of equity, *De Puy v. Traus. Co.*, 82 Md. 408; s. c., 33 Atl. Rep. 889; 34 id. 940.

Sufficiency of showing fraud and unlawful acts of a part of the officers of a corporation to justify, and appointment of a receiver on the application of a stockholder. *Id.*

§ 269. Where receivers of the estate or effects of any corporation shall be appointed by a court, upon or before the dissolution of any corporation, they shall be vested with all the estate and assets of every kind belonging to such corporation, from the time of their qualifying as receivers, and shall be trustees thereof for the benefit of the creditors of such corporation and its stockholders; and they shall proceed to wind up the affairs of such corporation, under the direction of the court by which they shall have been appointed, and shall have all powers which shall be necessary for that purpose.

Suits by receivers. § 274, and note.

[Actions by receivers, *Frank v. Morrison*, 58 Md. 440. Receiver not personally liable, when, *Gaither v. Stockbridge*, 67 Md. 222; s. c., 9 Atl. Rep. 632; 10 id. 309.]

When property of the corporation has been placed in the hands of a receiver, all expenses for safe-keeping and preservation are properly payable out of the income, or if there be none, then out of the proceeds of the corpus of the estate when sold, *Hooper v. Trust Co.*, 81 Md. 559; s. c., 32 Atl. Rep. 505.

A suit by a receiver, or by the creditors of a corporation, to enforce payment of unpaid subscriptions, to the capital stock, is governed by the law of the domicile of the corporation. *Id.*

§ 270. All sales, assignments, transfers, mortgages or other dispositions or convey-

ances of any part of the assets of the corporation, made after the filing of a bill for a dissolution thereof, under the provisions of this article; and all judgments confessed by said corporation, after that time, shall be absolutely void as against the said receivers.

[*Frank v. Morrison*, 58 Md. 440.]

§ 271. No dissolution of any corporation shall relieve its stockholders from the obligations and liabilities imposed on them by section 64 of this article; and if the said corporation shall be dissolved before its capital stock shall have been paid in, the liability of its stockholders shall continue to the receivers or to the creditors of the corporation who were such prior to its dissolution, in all respects as if the same had not been dissolved.

Personal liability of stockholders. §§ 64-66.

[*Frank v. Morrison*, supra; *Hall v. Ins. Co.*, 5 Gill, 484; *Stillman v. Dougherty*, 44 Md. 380; *Glenn v. Williams*, 60 id. 93.]

Assets of a corporation are not a trust fund for its creditors unless the corporation is insolvent. *Fear v. Bartlett*, 32 Atl. Rep. 322.]

§ 272. Upon the dissolution, in any manner not otherwise provided for, of any corporation created or to be created under the laws of this State, and unless other persons shall be appointed by some court of competent authority, the directors or managers of the affairs of such corporation, at the time of its dissolution, by whatever name they may be known in law, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the corporation, and to pay its debts, and shall divide among the stockholders the moneys and other property that shall remain after the payment of the debts and necessary expenses; and the said trustees shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands.

§ 273. The dissolution of a corporation by the decree of a competent court, shall not abate any suit or proceeding in favor of such corporation, which shall have been pending at the time of such dissolution; but all such suits or proceedings may be continued by the receivers, who shall have been appointed for such corporation, or by the trustees on whom the estate and effects of such corporation shall have devolved, in the name of such corporation, or in the names of such receivers or trustees, who may, in the discretion and under the direction of the court in which the suit shall be pending, be substituted as plaintiffs, subject to such order

as the court may deem expedient in relation to the payment or security of costs.

[When the fact of incorporation is shown by plaintiff, the burden of showing a dissolution is thrown upon defendant. *Regents v. Williams*, 9 G. & J. 365; see *Frank v. Morrison*, 58 Md. 440.]

§ 274. Whenever a receiver of the property or effects of a corporation shall be appointed before the dissolution or afterwards, new suits may be brought and carried on by any such receivers, either in their own names and capacities as such receivers, or in the name of the corporation for which they shall have been appointed; but no new suit shall be brought in the name of a corporation after it shall have been dissolved, or after the expiration of its charter.

See § 265, and note.

[Action maintained under above section. *Hayes v. Brotzman*, 46 Md. 519. No necessity to show special authority from the court. *Id.*

Stockholder estopped from setting up irregularities as defense to suit by receiver, when. *Morrison v. Dorsey*, 48 Md. 461; *Musgrave v. Morrison*, 54 *id.* 161.

Statute of Limitations no bar to action by receiver, when. *Frank v. Morrison*, 55 Md. 339.

Actions by receivers against subscribers and members. *Frank v. Morrison*, 58 Md. 423.]

§ 275. No suit commenced in the name of any such receiver shall be abated by his removal or death; but the same may be continued in the name of his successor, or of the corporation, if its charter has not expired or been dissolved, as may be directed by the court in which the suit shall be pending.

§ 276. The court in which any suit or proceeding against a corporation which shall have been dissolved by the expiration of its charter, or otherwise, shall be pending at the time of such dissolution, shall have power, on the application of either party thereto, to make an order for the continuance of such suit or proceeding, and the same may thereafter be continued until final judgment or decree shall be had therein, which shall have the like effect upon the rights of the parties as if such corporation had not been dissolved.

See Act of 1892, at p. 45.

[Expiration of charter during pendency of suit can only be availed of by a plea puis darrein continuance. *Agnew v. Bank*, 2 H. & G. 479.]

### Execution against the Stock of Corporations.

§ 277. Any interest which any defendant in a judgment or decree rendered by a court of law or equity, or in a proceeding by attachment on original process, has in the capital, joint stock or debts of a corporation transferable on its books, shall be liable to execution or attachment, and the same proceedings shall be had as in other cases, ex-

cept when they are varied by the following sections: Provided, That all executions or attachments levied or laid upon the shares or interests of any defendant in the capital, joint stock or debts of a corporation standing on its books in his name, shall only affect the interest which such defendant had in such capital, joint stock or debts at the time of levying such execution or attachment, and shall not in any way affect the right, title or interest acquired by any bona fide purchaser or pledgee for value to or in the capital, joint stock or debts of such corporation standing on its books in the name of such defendant, by a sale or pledge thereof by such defendant by a delivery of the certificate representing such capital, joint stock or debts, with the power of attorney to transfer the same made prior to the levying of such execution or attachment, and that nothing contained in the succeeding sections of this article shall be construed to apply to any such capital, joint stock or debts so sold or pledged, or to prohibit or prevent any such corporation or purchaser or pledgee from transferring the said capital, joint stock or debts represented by such certificate upon the books of the corporation in the same manner and to the same effect as if no such execution or attachment had been levied.

Attachment against stock. Art. IX, § 18.

§ 278. The sheriff or other officer, upon being instructed to levy such writ on any such stock or debt, shall deliver to the president or chief officer, or leave at the place of business of such corporation, a notice in writing, stating that he has seized the stock or debt of the defendant, (naming him,) and the purpose for which he has seized the same, and shall retain a copy of such notice, and return it with the writ.

§ 279. Upon the service of such notice, the sheriff may require the president, or any other officer of the corporation, to certify to him in writing the number of shares of stock, and the amount of transferable debt on its books, standing in the name of the defendant at the time of said notice; and if any president or other officer, so required, shall refuse or neglect for twenty-four hours to deliver such certificate, the sheriff or other officer shall certify the fact to the court to which the writ is returnable, or to any judge thereof; and the said court or judge may order an attachment for contempt against such president or other officer, and may compel him to answer upon oath on oral examination as to the number of shares of stock and amount of debt standing on the books of the corporation, in the name of the defendant, at the time of service of such notice, and may compel the production of the books of said corporation, and also fine the president or other officer for not giving the required certificate.

§ 280. When the sheriff has ascertained the number of shares of stock, and amount of such debt standing in the name of the defendant, he shall make a schedule of such shares or debt, or so much thereof as will be amply sufficient to secure the sum of money he is required to levy, and costs, and shall give notice to the corporation that the stock or debt not included in this schedule is released.

§ 281. If the levy be made under a fieri facias, the sheriff shall advertise and sell the stock or debt as if the same were real estate.

§ 282. If any corporation or its officers, after service of notice of seizure as aforesaid, shall transfer or permit to be transferred, any shares of stock or any debt standing at the time of service in the name of the defendant, unless the same is released, as provided in the succeeding section, such corporation shall pay to the plaintiff in the writ under which such notice was given, the full market value of the stock or debt so transferred, to be recovered by suit.

§ 283. If the proceedings under such writ be ended by countermand, payment or any other cause before a sale, the stock seized thereunder shall be released, and the sheriff shall give notice thereof in writing to the corporation.

§ 284. If the sheriff shall make sale of any shares of stock or transferable debt, whether he continues in office or not, or whether he has returned the writ under which the sale was made or not, he shall transfer the said stock or debt so sold on the books of the corporation to the purchaser; or if the sheriff making such sale shall die or remove from the county without making such transfer, the court to which the writ was returnable may appoint a person to make the same.

§ 285. If any corporation, or any of its officers, shall refuse to permit any transfer authorized to be made by the preceding section, the court to which the writ, by virtue of which such stock or debt was sold, was returnable, or any judge thereof in vacation, may punish by process of contempt all persons so refusing to permit such transfer, and may also cause the proper book of such corporation to be brought before such court or judge, and the transfer to be made; and the corporation shall be liable for all damages sustained by reason of a refusal to permit such transfer.

§ 286. The purchaser may refuse to accept the transfer, of any stock or transferable debt, unless it be made within thirty days after the sale, and may bring an action on the case against the sheriff, officers or corporation by whose default the said transfer was delayed or omitted, and may recover the value of the stock or debt at the time the transfer should have been made, or at any time afterwards, before the rendering of the verdict in his said suit.

§ 287. Any person whom the court may appoint to make any transfer, shall be entitled to the sum of one dollar, to be paid by the purchaser, and recovered by him from the person who ought to have made the transfer.

#### Police.

§ 288. Corporations owning or using any railroad, steamboat, canal, furnace, colliery or rolling-mill in this State, may jointly or severally apply to the governor to commission such persons as the said corporation or corporations may designate, to act as policemen for the protection of the property of said corporation or corporations, and for the preservation of peace and good order on their respective premises, railroad trains or steamboats.

§ 289. The governor, upon such application, may, if he thinks it proper so to do, appoint such persons, or so many of them as he may deem proper, to be such policemen; and shall issue to each person so appointed a commission, and shall transmit such commission to such clerk's office in the State as may, by such corporation or corporations, be designated, and he may revoke and annul any such appointments at his pleasure.

§ 290. Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe before a justice of the peace of the county or city in which his commission may be received, the oath or affirmation prescribed by the fourth section of the first article of the Constitution, which oath or affirmation shall be recorded in the clerk's office of such county or city; and every such policeman so appointed, after the recording of the oath or affirmation to be by him taken as aforesaid, shall possess and exercise, in the counties and cities in which the railroads, canals, collieries, furnaces, rolling-mills and premises of the corporation for which he may have been appointed are respectively situated, all the authority and powers held and exercised by constables at common law and under the statutes of this State, and also all the authority and powers conferred by law on policemen in the city of Baltimore.

§ 291. Every such policeman shall, when on duty, except when on detective duty, wear a metallic shield, with the word "police" inscribed thereon, and said shield shall always be worn in plain view, except when he is employed as a detective.

§ 292. The compensation of every such policeman shall be paid by the party or parties upon whose recommendation he was appointed, and neither the State nor any county therein shall be responsible for any part of such compensation.

§ 293. Whenever the services of any policeman so appointed as aforesaid shall no longer be required, a notice in writing to that effect shall be given by the corporation or cor-

porations at whose instance he was appointed, and such notice shall be filed in the clerk's office where the commission and oath or affirmation of such policeman shall have been recorded, which notice shall be noted by such clerk upon the margin of the record where such commission and oath or affirmation are recorded, and thereupon the power of such policeman shall cease and be determined.

#### Preferred Stock.

§ 294. Every corporation incorporated under the laws of this State, which has the power to issue bonds as evidences of indebtedness, and to secure the same by mortgage of the property of such corporation, or which has the power to obtain such money upon mortgage, may, whenever in the judgment of said corporation it is expedient to do so, in place of issuing such bonds and securing the same by a mortgage of the property of the said corporation, or instead of obtaining money upon mortgage, issue a preferred stock for any amount for which the said corporation may be authorized to issue its bonds, or for any amount which the said corporation may be authorized to obtain upon mortgage of its property, and may dispose of the said stock by sale, on such terms as it may prescribe, or by permitting the same to be subscribed for, as in the judgment of said corporation may be deemed expedient; and every corporation creating such preferred stock as aforesaid, may execute an agreement under seal, to be acknowledged as conveyances of land are required to be acknowledged, and recorded in the office of the clerk of the circuit court for the county where the principal office of such corporation shall be situated, or in the office of the clerk of the superior court of Baltimore city, in case such office shall be situated in said city, guaranteeing to the purchasers of, or subscribers to, such preferred stock, a perpetual dividend of six per centum per annum out of the profits of the said corporation, payable yearly or half yearly, as said corporation shall determine, before any dividend is distributed to any of the stockholders of the said corporation, other than the holders of said preferred stock so created; and the holders thereof shall have all the incidents, rights, privileges and immunities, and liabilities to which the capital stock of said corporation, or the holders thereof, may be entitled or subject; Provided, however, That no corporation shall exercise any power under this section, unless the creation of such preferred stock shall be authorized by a general meeting of the stockholders of such corporation; and the said preferred stock shall be and constitute a lien on the franchises and property of such corporation, and have priority over any subsequently created mortgage, or other incumbrance.

#### Process.

§ 295. Any corporation not chartered by the laws of this State, which shall transact business therein, shall be deemed to hold and exercise franchises within this State, and shall be liable to suit in any of the courts of this State, on any dealings or transactions therein.

See § 297, note. Taxation upon revenues of foreign corporation. Const., art. III, § 58; Act of 1890, at pp. 41-43. Foreign corporations. See §§ 109a-109e.

[Corporations created by act of Congress can be located within limit of a State. *State v. Buchanan*, 5 H. & J. 362.

Domicile of corporation: jurisdiction of United States courts. *Express Co. v. Trego*, 35 Md. 47. Liability of a foreign insurance company to be sued in this State by a non-resident. *Ins. Co. v. Gillett*, 54 Md. 212.

New York corporation doing business in Maryland, how summoned. *Wagner v. Shank*, 59 Md. 313.

Controversy between bona fide stockholders and those claiming to be stockholders must be determined by the courts of the State by which the corporation was created. And corporation must be made a party. *Wilkins v. Thorne*, 60 Md. 253.

Courts of Maryland will not interfere with internal management of a foreign corporation. Controversies must be settled in State creating it. *Mining Co. v. Field*, 64 Md. 151; s. c., 20 Atl. Rep. 1039.

Under above section, a foreign corporation having no place of business in the State, and having had no dealings therein, except the purchase of property at a sheriff's sale, could not be served with a writ of replevin for such property by service on its agent, temporarily within the State. *Crook v. Girard Co.*, 39 Atl. Rep. 94.]

§ 296. (As re-enacted April 7, 1892.) Process issued by any court or justice of the peace of this State against any corporation incorporated under its laws may be served on any president, director, manager, ticket agent or person selling tickets for passengers of any railroad company or other officer of such corporation, and if neither the president nor any of the directors, managers, ticket agents or other officers of such corporation reside in this State such process may be served anywhere within this State on any agent, attorney or other person in the service of such corporation, Provided That in every case the officer serving the process shall leave a copy of such process with the person upon whom the same is "served." And whenever any trust or guarantee company which shall be authorized and empowered under the laws of this State to insure the fidelity of persons holding places of trust or responsibility in, to or under any State, county, city corporation, company, person or persons whatsoever; or to become security for the faithful performance of any trust, office, duty, contract or agreement, and to supercede any judgments, or to go upon any appeal or other bond, then any such trust or guarantee company shall be liable to be sued in any of the counties of this State or in the city of

## Suits against corporations — G. L., Art. xxiii, §§ 297-300.

Baltimore wherever any such bond shall be given or liability incurred by such trust or guarantee company, and process shall be served upon any such trust or guarantee company, as is hereinbefore provided for by this section, and such process shall be issued to the sheriff of any county or the city of Baltimore, and shall be made returnable to the clerk of the court of the county or city of Baltimore from which same issued, and with the exceptions herein provided for as to trust and guarantee companies, all suits which shall hereafter be brought against any corporation which has been or may be incorporated under the general incorporation laws of this State shall be brought in the counties or city of Baltimore, as the case may be, in which the certificate of incorporation is required to be and has been recorded.

Corporation may be sued. § 51. Execution against stock. §§ 277-287. Proceedings for forfeitures. §§ 255-263. For dissolution. §§ 264-276.

[Sheriff's return should show affirmatively upon what person or persons the writ was served, so that the court can determine whether the service was upon the company. *R. R. Co. v. Rider*, 45 Md. 24.]

The attorney of the company not an officer within meaning of this section and service upon him not sufficient. *Id.*

Authority of attorney to waive service and enter appearance. *Id.*

Turnpike company may be sued, where. *Balt., etc., Road v. Crowther*, 63 Md. 572; s. c., 1 Atl. Rep. 279.]

§ 297. Suits may be brought in any court of this State, or before a justice of the peace, against any corporation not incorporated under its laws, but deemed to hold and exercise franchises herein, or against any joint-stock company or association doing business in this State by a resident of this State, for any cause of action; and by a plaintiff not a resident of this State, when the cause of action has arisen, or the subject of the action shall be situated in this State; and process in such suits may be served as provided in the preceding section, and also upon any agent of such corporation or joint-stock company or association; and in case of service of process on an agent, notice of such process shall be left at the principal office of said corporation, joint-stock company or association, if there be such office in this State; Provided, Nothing in this article shall prevent or affect the issue of attachments against corporations as now or hereafter allowed by law.

See §§ 295, 296, note. Foreign corporations. See §§ 109a-109e.

[Foreign corporation may sue in courts of Maryland. *Blinney's case*, 2 Bl. 99; *McKim v. Odom*, 3 Id. 407. Construction of section 279. *Myer v. Ins. Co.*, 40 Md. 595; *Cromwell v. Ins. Co.*, 49 Id. 366; *Ins. Co. v. Bachus*, 51 Id. 28; *Wagner v. Shank*, 59 Id. 322.]

Courts of Maryland will not interfere in controversies relating only to the internal manage-

ment of foreign corporation. Such controversies must be settled by the courts of the State creating it. *Mining Co. v. Field*, 64 Md. 151; s. c., 20 Atl. Rep. 1039.

A New York corporation being insolvent, its creditor may take any assets found within jurisdiction of this State. *Day v. Tel. Co.*, 66 Md. 354; s. c., 7 Atl. Rep. 608.]

§ 298. If any corporation or joint-stock companies embraced in the preceding section, after any liabilities shall occur within this State, or after any contract shall have been made by it with any resident of this State, shall cease to have any agent in this State, and no president, director or manager of such corporation, or joint-stock company or association, can be found in this State, then in such case service of any writ or process issuing from the courts of this State, on the person who was the last agent of such corporation or joint-stock company in this State, shall be deemed sufficient service, if a copy of such process be served on the president or manager, or two directors of such corporation or joint-stock company, wherever they may be found, and an affidavit of such service be made before any person authorized by the laws of this State to take the acknowledgments of deeds.

[See *R. R. Co. v. Rider*, 45 Md. 24.]

§ 299. If any corporation whatever, upon which process has been served as hereinbefore prescribed, shall fail to appear during the term or rule day for the return of process to which such process shall be returned, or by the second day of the succeeding term or rule day for the return of process, judgment by default shall be entered against such corporation, and the amount of the claim of the plaintiff shall be ascertained by a jury of inquiry or otherwise, as in other cases of judgment by default.

§ 300. When a judgment has been recovered against a corporation, and an execution on such judgment returned nulla bona, the person or body corporate entitled to such judgment may file a bill in equity against all or any persons who may be in any manner indebted to said corporation, either for the stock thereof or on any other account; and if the court shall find such person or persons to be indebted to said corporation, a decree shall pass directing such person so found to be indebted to bring the money into court, to be distributed ratably among the creditors of such corporation, in the same manner that distribution is made on a creditor's bill; and any of the defendants to said bill may pray a trial at law of any issue of fact in said case, which issue shall be sent to a court of law for trial; and the plaintiff may require, by said bill or by another bill, the officers of such corporation to discover, under oath, who are indebted to said corporation, and the amount and consideration of such indebtedness; and

Taxation; employment of children — G. L., Art. xxiii, §§ 301-3; xxvii, §§ 139, 140, 148, 149.

for the purpose of such discovery, all or any of the officers of said corporation may be made defendants, and any of the parties in said causes shall be entitled to an appeal, as allowed in cases in equity; and the said bill may be filed in the circuit court for any county in which any of the directors of such corporation reside, or in the county in which said corporation last had its principal office or place of business, or in the circuit court of Baltimore city, if any of said directors there reside, or if said corporation last had in said city its principal office or place of business.

§ 301. It shall be sufficient in any suit, pleading or process, either at law or in equity, or before any justice of the peace, by or against any joint-stock company or association, to describe the said joint-stock company or association by the name or title by which it is commonly known, or by or under which its business is transacted.

[Name more strictly required in pleadings than in a contract. *T. R. Co. v. Creeger*, 5 H. & J. 122.]

Corporation should be described in pleading by the name by which it is commonly known, or under which its business is transacted. *Powhatan Co. v. Potomac Co.*, 36 Md. 238.]

### Taxation.

§ 302. Nothing in this article contained shall be so construed as to bring within any supposed exemption from taxation, State, county or municipal, in the charter of any company desiring to take advantage of any of the provisions in this article contained, any property, real, personal or mixed, owned under or by virtue of any of the provisions of this article, or any stock preferred or otherwise, or any bonds or other evidence of debt issued under or by virtue of any of the provisions of this article.

Taxation upon revenues of foreign corporation. Const., art. III, § 58. Taxation upon corporations in general. G. L., art. LXXXI, §§ 2-144. Upon certain corporations. See Acts of 1890, at pp. 41-43.

[Taxation of real estate of corporation. Return of officer, etc. See *Mayor, etc. v. Canton Co.*, 63 Md. 218.]

Taxation of stock. *Coal Co. v. Comrs.*, 59 Md. 195.]

### General Applicability.

§ 303. All corporations heretofore formed under the general laws of this State, relating to corporations, or under any special law, are hereby declared to be entitled to the benefit of and to be subject to all the regulations in this article contained, for the government of the corporation herein referred to, so far as the same be applicable to said several corporations heretofore formed as aforesaid; and shall also have the benefit and be subject to the processes,

remedies or proceedings by this article authorized to be taken by or against the corporations herein referred to, so far as the same be applicable to the several corporations heretofore formed as aforesaid

Existing corporations may reincorporate. § 81.

[*Goodman v. Jedidjah Lodge*, 67 Md. 125; s. c., 9 Atl. Rep. 13; 13 id. 627.]

## ARTICLE XXVII.

### Crimes and Punishments.

Sec. 139. Hours of labor of children.

140. Longer employment of children; penalty.

148. Manufacturing establishments to be kept clean.

149. Penalty for violation of preceding.

§ 139. No child under the age of sixteen years shall be employed in laboring by any person, firm, or corporation, in any cotton, woolen or other manufacturing establishment in this State more than ten hours in any one day.

§ 140. Any such person, firm or corporation who shall employ any child under sixteen years of age, contrary to the provisions of the preceding section, and any superintendent, overseer or other agent of any such person, firm or corporation, and any parent or guardian of such minor, who permits such minor to work or be so employed contrary to the provisions of said section, shall, for each offense, be punished by a fine not exceeding fifty dollars for each and every case, to be recovered on complaint in any court of competent jurisdiction; and all prosecutions for offenses under this section shall be begun within one year from the commission thereof.

§ 148. All factories, manufacturing establishments or workshops in this State, shall be kept in a cleanly condition and free from effluvia arising from any drain, privy or other nuisance; and no factory, manufacturing establishment or workshop shall be so overcrowded while work is carried on therein as to be injurious to the health of the persons employed therein; and every such factory, manufacturing establishment or workshop shall be well and sufficiently lighted and ventilated in such a manner as to render harmless, as far as practicable, all the gases, vapors, dust or other impurities generated in the course of the manufacturing process or handicraft carried on therein, which may be injurious to health.

§ 149. Any person, firm or corporation, managing or conducting any factory, manufacturing establishment or workshop in this State, who shall neglect any of the requirements of the preceding section, or do or permit to be done in the factory, manufacturing establishment or workshop conducted or managed by him, her, them or it, any act contrary to the provisions of said section,



Evidence — G. L. Art. xxxv, § 3Sa; Pleadings — Art. lxxv, §§ 23, 10S; Tax.— Art. lxxxi, § 2.

shall be guilty of a misdemeanor, and shall, upon conviction thereof in a court of competent jurisdiction, be fined one hundred and fifty dollars for each offense so committed.

## ARTICLE XXXV.

### Evidence.

Sec. 3Sa. Foreign incorporation, evidence of.

§ 3Sa. (Enacted April 14, 1898; L. 1898, ch. 478.) The copy of the record or register of any corporation, which the laws of any foreign country where the same may be incorporated, require to be recorded or registered, and which has been recorded agreeably to such laws, and which is certified under the hand of the keeper of such record or register and the seal of the court or office in which said record or register is kept, and which is also certified to be in due form and by the proper officer, making reference to the act under which corporations are formed under the laws of such foreign country, shall be good and sufficient evidence in any court of this State to prove such incorporation.

(Approved April 14, 1898.)

## ARTICLE LXXV.

### Pleadings, Practice and Process at Law.

Sec. 23. Forms of pleadings.

Sub-sec. 10S. Incorporation, when to be taken as admitted.

§ 23. The forms of pleadings which follow shall be sufficient; and the like forms may be used, with such modifications as may be necessary to meet the facts of the case; but nothing herein contained shall render it erroneous or irregular to depart from said forms so long as substance is expressed.

\* \* \* \* \*

10S. Whenever the \* \* \* incorporation of any alleged corporation, \* \* \* is alleged in the pleadings in any action or matter at law, the same shall be taken as admitted for the purpose of said action or matter, unless the same shall be denied by the next succeeding pleading of the opposite party or parties.

## ARTICLE LXXXI.

### Revenue and Taxes.

- Sec. 2. What property shall be taxed; payment of taxes by corporation.
4. Shares of stock exempt, when.
- 64a. Sale of corporate property for taxes, disposition of proceeds.
84. State tax on capital stock for previous year to be paid.
85. If no capital stock, State tax to be paid on assessment.
87. Taxes on corporate bonds, how to be paid.
88. Taxes on bonds of railroads wholly within this State.

Sec. 88a. Corporations required to pay bonus on capital stock.

88A. Penalty for neglect to pay taxes; suit to be brought.

88B. Failure of corporation to appear; proceedings.

88C. Certificate of comptroller prima facie evidence.

88D. Attorney to bring suit selected by the comptroller.

88E. Continued default by corporation; forfeiture of franchise.

88F. Bonus required on capital stock.

88G. Failure to pay; duty of comptroller.

88H. Suit for recovery of bonus, where brought.

88I. Continued to pay; forfeiture of franchise.

88J. Certificate of comptroller prima facie evidence.

(Previously existing corporation not relieved from any bonus.)

96. Stock, bonds, etc., excluded from assessment in the several counties so far as relates to State tax.

131. Situs, for purpose of taxation, of stock of non-residents.

141. Real property of corporations to be returned for taxation.

142. Assessment of corporation whose capital is invested in taxable securities.

143. Abatement of plant of manufacturing corporations.

144. Return of State tax commissioner; notification to corporation; appeal.

178. Taxation of shares of stock.

194. Taxation of bonds and other evidence of debt issued by corporations.

201. Same.

§ 2. (As re-enacted and amended March 30, 1896.) \* \* \* All real properties in this State belonging to any bank incorporated under the laws of this State or of any other State or belonging to any national bank located in this State, or to any company or corporation incorporated by or under the laws of this State, or of any other State, or under the laws of the United States, or of any territory, or under the laws of the United States relating to the District of Columbia, or belonging to any joint-stock company doing business in this State, is and shall be valued and assessed for the purpose of State, county and municipal taxation as the property of such bank, company, corporation or joint-stock company, and such bank, company, corporation or joint-stock company shall pay such respective taxes thereon. All money belonging to residents of this State, which shall be the proceeds of the sale of stocks, bonds or other property disposed of for the purpose of evading and escaping taxation; all shares or interest in any joint-stock company, and all shares of stock in any bank incorporated under the laws of this State, or any national bank located in this State, or in any corporation incorporated under the laws of the State, shall be valued and assessed for the purpose of State, county and municipal taxation, to the owners thereof in the county or city in this State in which said owners may, respectively, reside; the taxable value of such shares shall be ascertained and determined, and the taxes thereon levied and collected as is now or may be hereafter provided by law.

All personal property in which any resident of this State has an equitable interest with the legal title to the same in some other person or corporation who is a non-resident shall be valued and assessed for the purposes of State, county and municipal taxation to the equitable owner thereof in the county or city in which he, she or it resides, and such equitable owner or owners shall pay the taxes thereon.

All shares of stock or shares in any bank other than a national bank, or in any company or corporation incorporated by or located in, and doing business in any other State or District of Columbia, or in any territory or foreign country owned by residents of this State, shall be valued and assessed for the purposes of State, county and municipal taxation, to the owners thereof in the county or city in which said owners may, respectively, reside. All bonds made or issued by any State or District of Columbia or territory or by any corporation whatsoever belonging to the residents of this State, all investments in private securities of every kind and description belonging to residents of this State, the real property located in this State, and the personal property owned by any corporation incorporated by this State, not having a capital divided into shares, or having shares of capital stock which are wholly or in part exempted from taxation by this State when such real or personal property so owned by said corporation is not protected from taxation, by the exemption of said shares of stock from taxation, shall be valued and assessed for the purpose of State, county and municipal taxation to the owners thereof, in the county or city in which such owners may respectively reside; \* \* \*

Taxation upon revenue of foreign corporations. Const., art. III, § 58. Property of corporations not to be exempt from taxation. G. L., art. XXIII, § 302. Taxation upon certain corporations. See Acts of 1890, at pp. 41-43. Corporation not to be dissolved until taxes paid. Act 1892, at p. 45.

[Assessment and Taxation Act of 1841 constitutional. *State v. Mayhew*, 2 Gill, 487.

Also Taxation Act of 1843. *Id.*

Taxation of both the shares of stock and the property of a bank is double taxation, and unconstitutional. *Comrs v. Bank*, 48 Md. 117; *Gordon v. Mayor*, 5 Gill, 231.

But the property of a bank being exempt, the taxation of the stock is constitutional. *State v. Mayhew*, supra; contra, *State v. Wilson*, 52 Md. 638.

Tax decisions. See *O'Neal v. Bridge Co.*, 18 Md. 1; *Appeal Tax Court v. R. R. Co.*, 50 id. 276; *Same v. Academy*, id. 322; *Same v. Patterson*, id. 354; *Same v. Gill*, id. 377; *Same v. R. R. Co.*, id. 397; *Same v. Ry. Co.*, id. 417; *Bonaparte v. State*, 63 id. 472.]

§ 4. (As amended March 30, 1896.) The provisions of this article shall not apply to \* \* \* the personal property of any corporation incorporated by this State, and having capital stock divided into shares, when

said shares of said corporation are subject to taxation under the laws of this State, \* \* \*.

§ 64A. (Enacted April 4, 1896.) Whenever a sale of either real or personal property of a corporation, from which State taxes are due and payable, shall be made by any sheriff, constable, trustee, receiver or other ministerial officer, under judicial process or otherwise, all sums due and in arrears for State taxes from the corporation whose property is sold, shall be first paid and satisfied, after the necessary expenses incident to the sale; and the officer or person selling said property, shall pay the same to the person whose duty it is to collect or receive said taxes, under the laws of this State.

§ 84. The president or other proper officer of the banks, State and national, and other incorporated institutions and companies, chartered by this State, or located and doing business therein, shall annually, on the second day of January, pay to the treasurer of the State, the State tax imposed upon the shares of capital stock of said banks, institutions or companies for the previous year, whether they or any of them have or have not declared any dividend or earned any profits, and without regard to the place of residence of stockholders.

Stock in personal estate. G. L., art. XXIII, § 63. List of stockholders to be kept by secretary. *Id.*, § 72. Bonus to be paid on capital stock. § 88a et seq.; § 88f et seq., post. See § 2, supra, note.

[Tax cannot be recovered back, whether legal or illegal, if voluntarily paid. *Morris v. Mayor*, 5 Gill, 244.

State has no right to violate a contract made with a corporation, exempting its property from taxation. The Tax cases, 12 G. & J. 118.

The shares of stock of corporation are liable to be assessed at their cash value, at the time of the assessment. *Ins. Co. v. Mayor*, 23 Md. 296.

The shareholders, and not the corporation, as an entirety, are the owners of its capital stock. *Id.*

Right of the State to a mandamus to compel payment, by officers of corporation, of assessment on its capital stock. *Emery v. State*, 41 Md. 38.

To whom taxes are payable. *Id.*; *Barney v. State*, 42 Md. 480.]

§ 85. In all cases where any incorporated institution or company has no capital stock, so called, the property and assets of said company, of whatever nature, shall be assessed, and the president or other proper officer thereof shall pay to the treasurer the tax due upon said property and assets, at the time aforesaid, and also to the collector of the county or city, the amount of all taxes due on said property and assets, to said county or city.

[*State v. Sterling*, 20 Md. 502.]

§ 87. The president or other proper officer of any incorporated institution or company of this State which shall have issued any bonds, certificates or evidences of debt, bear-

ing interest, shall, on or before the first day of July in every year, make return to the comptroller, of the aggregate amount of said bonds, certificates or other evidences of debts held by or belonging to the residents of this State, and pay to the treasurer on said day, out of the interest due to the holders thereof, the State tax thereon; and shall also furnish to the county commissioners or appeal tax court of the county or city, annually, on or before the first day of March, a list of the holders of said bonds, certificates or evidences of debt, residing in said county or city, when such residence is known, and when the residence of the holder is unknown, to the county commissioners of the county where such corporation is situate, or to the appeal tax court, if situate in Baltimore city; if any such officer shall fail to perform the duty imposed by this section, he shall, upon indictment and conviction thereof in the court having criminal jurisdiction, be fined not less than five hundred dollars, and imprisoned not less than one month, and until this fine is paid; all bonds, certificates or evidences of debt issued by any such incorporated institution or company in this State, shall be presumed to be held and to belong to residents of this State; but if the holder of any such bonds, certificates or evidences of debt shall certify upon oath, duly administered according to law, to the said president or other proper officer, that said holder is the bona fide owner of such bonds, certificates or evidences of debt, and that he is a bona fide resident of any other State or county, then such president or other proper officer shall report the fact of such holding by such non-resident or non-residents, and shall deduct from the amount of bonds, certificates or other evidences of debt to be taxed, all such bonds, certificates or evidences of debt so owned by non-residents of this State as aforesaid, and shall not be liable for the taxes on the same.

§ 88. All bonds and certificates of debt bearing interest, issued by any railroad corporation or other corporation of this State, secured by mortgage of property wholly within this State, shall be subject to assessment and taxation to the owner or owners thereof in the same manner as like bonds or certificates of debt bearing interest and secured by mortgage of property partly in this State and partly in some other State or States are now subject under the laws of this State; and it shall be the duty of the county commissioners of the several counties, and the appeal tax court of Baltimore city, to assess all such bonds or certificates of debt to the owner or owners thereof resident in their several counties, or in the city of Baltimore, respectively.

§ 88a. (Enacted April 8, 1890.) Every corporation incorporated since January first, eighteen hundred and ninety, under any general or special law of this State, except

cemetery companies, incorporated for religious or purely charitable and benevolent, and railroad companies shall pay to the State treasurer, for the use of this State, a bonus of one-eighth of one per centum upon the amount of capital stock which said company is authorized to have, in two equal instalments, and a like bonus upon any subsequent increase thereof; the first instalment shall be due and payable upon the incorporation of said company, or the increase of the capital thereof, and the second instalment one year thereafter; and no company as aforesaid shall have or exercise any corporate powers until the first instalment of said bonus has been paid to the State treasurer; whenever the capital stock of any of said companies, or any company of the like character heretofore incorporated shall be increased, a bonus of one-sixth of one per centum upon the amount of said increase, shall be paid to the State treasurer in two equal instalments, the first to be due and payable upon the recording of the certificate of such increase, or upon the passage of any special act authorizing such increase, and the second instalment shall be due and payable one year thereafter.

[Under above section a person sued by a corporation not having paid such bonus may object that it has no capacity to sue. And the bonus cannot be paid so as to acquire the right after commencement of the suit. *Maryland T. & I. Works v. West End Imp. Co.*, 33 Atl. Rep. 620.]

§ 88a. (Enacted April 3, 1890.) If any corporation of this State from which State taxes shall be due and payable on the assessed value of its shares of capital stock, shall fail or neglect to pay the same to the treasurer of the State before the first day of November of the year for which such taxes have been assessed and levied; such corporation shall for such failure and neglect forfeit and pay to the State of Maryland an additional amount of five per centum as penalty or damages, to be added to the said State taxes so due and unpaid, and it shall be the duty of the comptroller to add the said penalty or damages to the said account, and forthwith to make out said account and certify the same under the seal of his office, and to cause suit to be brought for such State taxes and such penalty or damages in the circuit court for the county in which the principal office of said corporation is located, or in the superior court of Baltimore city, or the court of common pleas of the city of Baltimore, if the principal office of such corporation be located in said city, and the said suit shall stand for trial at the first term after service of the writ shall have been made on such corporations; and service of the writ aforesaid on any officer of such corporation shall be deemed and taken as sufficient service on such corporation.

§ 88b. (Enacted April 3, 1890.) If upon the return of the writ issued against such corpo-

ration, and the said corporation being duly summoned as aforesaid, such corporation shall fail to appear by attorney or agent upon the first call of the docket, it shall be the duty of the court to cause the personal appearance of the said corporation to be entered, and the cause shall stand for trial or hearing and judgment shall be rendered as if said corporation had appeared by attorney, and if such corporation shall appear by attorney or agent and either party shall desire a trial by jury, it shall be the duty of the court to cause the issues to be framed and a jury to be empaneled for the trial thereof, and if the verdict of the jury shall be for the State, judgment shall be entered without stay for the amount of the State taxes so due as aforesaid, and the five per cent. additional as damages with interest and costs, and a fee of ten dollars shall be allowed the attorney for the State, to be taxed in the plaintiff's costs in said suit, and execution shall be issued on such judgment if the same be not paid into the treasury within twenty days after the rendition thereof.

§ SSC. (Enacted April 3, 1890.) The certificate of the comptroller under seal, of the amount of such State taxes so due as aforesaid, and of such penalty or damages, shall be prima facie evidence to entitle the State to judgment for said penalty or damages in every case in which such State taxes shall be so in arrear and unpaid and for which such suit shall be so brought as aforesaid.

§ SSD. (Enacted April 3, 1890.) The comptroller of the treasury may select any attorney in whom he may have confidence, to bring such suit and conduct the same to judgment and execution; but such attorney shall have no power to receive or receipt for the money so due the State, and no acquittance shall be good to discharge any such corporation from such taxes, but the receipt of the State treasurer for such amount so due as aforesaid, or the proper officer to whom execution may be issued on such judgment as aforesaid; if any such attorney or person other than the State treasurer or the proper officer to whom execution may issue on such judgment shall or presume in any such case to receive and give receipt for such amount so due the State, such attorney or other person shall be guilty of a misdemeanor, and shall upon conviction, be fined double the amount so received and receipted for, and shall stand committed until such fine and the costs thereon are fully paid.

§ SSE. (Enacted April 3, 1890.) If after suit brought and judgment rendered as aforesaid, any such corporation shall still continue in arrear and shall fail or neglect to pay its State taxes so due as aforesaid, for the space of two years after the same shall be in arrears, such failure and neglect shall be deemed to amount to and shall constitute a forfeiture of the charter of such

corporation, and such charter shall be decreed to be so forfeited and annulled ipso facto.

§ SSF. (Enacted March 21, 1894.) Every corporation which shall be incorporated after the date of the passage of this act under any general or special law of this State, except cemetery companies, companies created for purely benevolent and charitable purposes, railroad companies and building or homestead associations incorporated under article twenty-three of the Code of Public General Laws, title "Corporations," subtitle "Provisions for the Formation of Corporations," section eighteen, class (5), shall pay to the State treasurer for the use of the State a bonus of one-eighth of one per centum upon the amount of capital stock which said company is authorized to have, and a like bonus upon the amount of any subsequent increase of capital stock the company is authorized to have; said bonus upon the original capital stock shall be due and payable upon the incorporation of said company, and upon the increase upon the recording of the certificate of such increase or the passage of any special act authorizing such increase; and no company as aforesaid which shall be incorporated after the date of the passage of this act shall have or exercise any corporate powers until said bonus has been paid to the State treasurer; whenever any company of the character aforesaid, incorporated prior to the date of the passage of this act, shall be authorized to increase its capital stock, it shall pay a tax of one-eighth of one per centum to the State treasurer for the use of the State upon the amount of increase said company is authorized to have; said bonus shall be due and payable upon the recording of the certificate of increase authorized or upon the passage of any special act authorizing such increase.

[Under above section, a corporation not paying the bonus has no capacity to sue, though § SSH provides that the State may sue the corporation to recover the bonus. *Maryland T. & L. Co.*, 39 Atl. Rep. 620.]

§ SSG. (Enacted March 21, 1894.) If any corporation or company from which said bonus shall be due, shall fail or neglect to pay the same to the treasurer of the State for the space of two months after the same has been due and payable as aforesaid, it shall be the duty of the comptroller to make out said account against said corporation, and certify the same under the seal of his office and transmit the same to some attorney in whom he has confidence, and to cause suit to be brought for the recovery of said bonus; but no acquittance shall be good to discharge such corporation from such bonus, but the receipt of the treasurer of the State or the proper officer to whom execution or judgment may issue.

§ SSH. (Enacted March 21, 1894.) Suit for the recovery of such bonus shall be brought

In the county where the incorporation papers of such corporation are recorded or where the principal office of such company is located, or in the city of Baltimore, if the incorporation papers of such company are there recorded, or the principal office of such company is there located, and the service of the writ of summons upon any officer or agent of such company, or upon any stockholder or incorporator in such company, shall be deemed and taken as sufficient service on such corporation upon the return of the writ issued against such corporation; and such corporation being summoned as aforesaid, the cause shall stand for trial or hearing according to the laws and the respective rules of courts of this State; and if judgment shall be rendered against such corporation, a fee of ten dollars shall be allowed the attorney for the State, to be taxed in the plaintiff's costs.

§ SSI. (Enacted March 21, 1894.) If, after suit brought and judgment rendered as aforesaid, any corporation from which said bonus shall be due as aforesaid, shall continue in arrears and shall fail or neglect to pay said bonus to the State treasurer, for the space of two years after the same shall be so in arrears, such failure and neglect shall be deemed to amount to and shall constitute a forfeiture of the charter of such corporation, and said charter shall be decreed to be so forfeited and annulled ipso facto; and that any and all corporate powers exercised by any such building or home-stead association formed since January first, 1890, and prior to the date of the passage of this act, are hereby given validity and full force.

§ SSJ. (Enacted March 21, 1894.) The certificate of the comptroller, under the seal of his office, shall be prima facie evidence of the amount of bonus due as aforesaid, to entitle the State to judgment for said bonus and costs of suit.

[§ 2. And be it enacted, That all acts and parts of acts inconsistent with the provisions of this act (§§ SSF-SSJ) be and the same are hereby repealed; Provided, however, That no corporation incorporated prior to the date of the passage of this act shall in any manner by this act be relieved or released from the payment of any bonus now due and owing by it or which shall become due and payable by it prior to the date of the passage of this act, under the provisions of chapter five hundred and thirty-six of the acts of the general assembly of Maryland, the year eighteen hundred and ninety (§ 88a), excepting, nevertheless, such classes of corporations as will be exempt from the operation of this act, which said classes of corporations heretofore formed shall be exempt from the operation of this act in like manner as such classes of corporations hereafter to be formed.]

§ 96. \* \* \* The capital stock and bonds, certificates or other evidences of debt, bearing interest, issued by incorporated companies or institutions of this State, shall be excluded from the assessment in the several counties and city of Baltimore, so far as

relates to the State tax, the payment of said tax thereon being hereinbefore provided for.

[See State v. Mayhew; Barney v. State, supra; §§ 2 and 81.]

#### Stock owned by Non-Residents.

§ 131. For the purpose of valuing the stock of banking and other private corporations held by non-resident stockholders, it is hereby declared and understood that it is stock of banking, insurance or other corporations usually termed moneyed institutions, is situate at the place at which the principal office for the transacting the business of such corporation is situate; the stock of a turnpike, railroad, steamboat, canal or other improvement corporation is situate at the place where its principal office for the transaction of business shall be established, if the said office be within the limits of this State, and shall be so assessed, and if not, then the assessable property of such corporation shall be valued and assessed in the county or counties in which said property is situate, and in the city of Baltimore so far as it is situate in said city; and the stock of mining, manufacturing and other like corporations, situate at the place where the works of such corporation, or the greater part of their operations, respectively, shall be conducted, shall be assessed in like manner in the county or city where such works are situate.

[Stock owned by non-residents in street car company taxable in Baltimore. Mayor v. R. R. Co., 57 Md. 31.

Construction of section. Coal Co. v. Comrs., 59 Md. 186.

See O'Neal v. Bridge Co., 18 Md. 1.]

§ 141. (As amended March 30, 1896.) At the time of making the returns of stockholders to the county commissioners and appeal tax court of Baltimore city, as required by law, the president or other proper officer of every bank or other incorporated institution incorporated under the laws of this State or doing business therein, and of every joint-stock company doing business in this State, shall furnish to the county commissioners of each county in which such bank or other incorporated institution or joint-stock company shall own or possess any real property, and to the appeal tax court of Baltimore city, if such bank or other incorporated institution or joint-stock company shall own or possess any real property in said city, a true statement of such real property situated or located in such county or city, and such real property shall be valued and assessed by said county commissioners and appeal tax court, respectively, to the said bank or incorporated institution or joint-stock company so owning the same, and the said county commissioners and appeal tax court shall give duplicate certificates of such valuation and assessment to such president or other officer, who shall transmit one of such duplicate certificates with his return to the

State tax commissioner, and State, county and municipal taxes shall be levied upon and paid by such bank or other incorporated institution or by such joint-stock company on such assessment in the same manner as the same are levied upon and paid by individual owners of real property in such county or city; the respective taxable value of the shares of stock in such banks, corporations and joint-stock companies shall be ascertained by the State tax commissioner in the manner following:

He shall deduct the assessed value of such real property belonging to the said respective banks, corporations or joint-stock companies from the aggregate value of all shares of such respective banks, corporations or joint-stock companies and divide the remainder by the number of shares of the capital stock or share of such respective banks, corporations or joint-stock companies and the quotient shall be the taxable value of each of such respective shares for State purposes, and all State taxes thereon shall be paid as provided now or hereafter by law, and when the valuation and assessment of the shares of the capital stock or shares of such banks, corporations or joint-stock companies shall have been finally determined or made for State purposes, the State tax commissioner shall certify to the county commissioners of each county where any of the stockholders or shareholders may reside, and to the appeal tax court of Baltimore city if any of said stockholders or shareholders reside in said city, and to the county commissioners of the county in which such bank, corporation or joint-stock company is situated, or to the appeal tax court of Baltimore city if it is situated in said city, the assessed taxable value of such respective shares of stocks, or shares so ascertained as aforesaid. And the said taxable value of such respective shares of stock or shares in such banks, corporations or joint-stock companies owned by residents of this State, and taxable within this State, shall for county and municipal purposes be valued to the owner thereof, in the county or city in this State in which such owner shall respectively reside, and the said taxable value of such of said stock or shares as is held by non-residents of this State, shall, for county and municipal purposes, be valued to the owners thereof in the county or city in which said bank, corporation or joint-stock company is situated; but all county or municipal taxes assessed upon said respective taxable value of such respective shares of stock or shares shall be collected from such bank, corporation or joint-stock company, and when so paid, shall or may be charged by such bank, corporation or joint-stock company to the account of such stockholders or shareholders, respectively; but it is expressly provided that all railroad companies working their roads by steam power incorporated by or under the laws of this State or any other

State, territory, District of Columbia or foreign country, and doing business in this State, shall, respectively, be subject to the annual State tax upon their respective gross receipts within the State, prescribed by section 146\* of this article, which shall be paid and collected in a manner provided now or hereafter by law, and the real and personal taxable property belonging to such respective railroad companies shall be subject to county and municipal taxation in this State in the respective counties and cities in which such property is located; and where such respective railroad companies are subject to such gross receipts tax for State purposes their shares of stock and real or personal property shall not be subject to taxation for State purposes, and when such real and personal property of such respective railroad companies is subject to county and municipal taxation their respective shares of stock shall not be subject to county and municipal taxation, but the capital stock and property of all other corporations which are subject to a tax upon their gross receipts, other than railroad companies, shall be valued, assessed and taxed for State, county, and municipal purposes like the capital stock and property of other corporations under this article.

§ 142. Any corporation having a capital stock divided into shares, and owning as an investment of part of its capital any of the stock debt of this State, upon which the State tax has been deducted by the treasurer, or of the stock debt of the city of Baltimore on which the State taxes have been paid or are payable by said city, or shares in any bank or other corporation of this State upon which the State and county or city taxes are levied and paid, or are payable by such bank or other corporation, may report the same in detail under the oath of the president, cashier, treasurer or other proper officer, to the State tax commissioner, and the amount of such stock debt or debts, or the assessed value of such capital stock so owned, and upon which such taxes are paid or payable as aforesaid, shall be allowed as a credit in the settlement of the taxes on the shares of capital stock of such corporation so owning the same; and any corporation not having capital stock divided into shares, and owning as an investment of part of its assets any of the stock debt of this State upon which the State tax has been deducted by the treasurer, or the stock debt of the city of Baltimore on which the State taxes have been paid or are payable by said city, or shares of the capital stock of any bank or other corporation of this State, upon which the State and county or city taxes are levied and paid, or are payable by such bank or other corporation, may report the same in detail, under the oath of its president, cashier, treasurer or other proper officer, to the State tax commissioner; and

\*Tax upon gross receipts of railroad companies.

the amount of such stock debt or debts, or the assessed value of such shares of capital stock so owned, and upon which such taxes have been paid, or are payable as aforesaid, shall be allowed as a credit in the settlement of the taxes on the assets of such corporation so owning the same; but no credit shall be allowed to any such corporations by reason of any investment on which the taxes are not paid or payable as aforesaid; nor shall such credits be allowed in any case where the officer making such return for such corporation shall fail to state in such return that said investments are owned by the corporation of which he is such officer, and are not held by such corporation as a security for any loan, or as a collateral security for any payment or other purpose.

§ 143. The president, or other proper officers of every corporation actually engaged in the business of manufacturing in the city of Baltimore, or in any county where the tools and machinery of manufacturers have been exempted from county taxation, in addition to the return provided to be made by the preceding section, shall furnish to the appeal tax court of Baltimore city, or to the county commissioners of such county, a true statement of the mechanical tools, whether worked by hand or by steam, or other motive power, and of any machinery, manufacturing apparatus, or engines owned by such corporation and actually employed and used in the business of manufacturing in said city or county; and the property so returned shall be valued and assessed by said appeal tax court, or by the county commissioners; and the said appeal tax court or county commissioners shall give duplicate certificates of such valuation to such president, or other officer, who shall transmit one of such certificates, with his return, to the State tax commissioner; and the State tax commissioner, in addition to the valuation which he is required to make for State taxation, shall make a further valuation of the stock of said corporation, by deducting from the value of each share, as assessed for State taxation, the proportionate amount of the value of tools and machinery, as assessed by the said appeal tax court or county commissioners; and the valuation of the shares thus determined shall be that for all shares taxable in the city of Baltimore for city taxes, if the said corporation is located in Baltimore city, or for the county taxes, if the county wherein the corporation is located has exempted manufacturers' tools and machinery from taxation.

[Gasometers and gas mains or pipes belonging to a gas company, not part of the "machinery." *Gas Co. v. Mayor*, 62 Md. 588. *Electric light company* held not a manufacturing corporation within an ordinance exempting such industry from municipal taxation. *Light & Power Co. v. City*, 36 Atl. Rep. 646.]

§ 144. As soon as the State tax commissioner shall have valued and assessed the

shares in the several banks and other corporations in this State, he shall certify and return the said valuation to the comptroller of the treasury, who shall at once proceed to notify the president, cashier or other proper officer of such banks or other corporations, of the said valuation and assessment of their shares, respectively, by transmitting to such president or other officer, an account of the State taxes due from such bank or other corporation under such valuation and assessment, by mail, under cover fairly directed to such president or other officer, and shall note in a book the date of placing in the mail the envelope or cover containing such account. If no appeal be taken within thirty days from such transmission, the said valuation and assessment shall be final; but any such bank or corporation may, within thirty days after such notification, appeal from such valuation to the comptroller of the treasury and State treasurer, stating in such appeal the reasons and grounds of such appeal; and said comptroller and treasurer shall consider the same, and if the comptroller and treasurer shall both be of the opinion that such valuation and assessment so made by the State tax commissioner is erroneous, and ought to be changed, they shall change the same accordingly, and the valuation and assessment so agreed upon by the comptroller and treasurer shall be final; but if either the comptroller or treasurer shall agree with the State tax commissioner as to the correctness of the valuation so made by him, then such appeal shall be dismissed, and the original valuation shall be and remain as the true valuation of such shares.

§ 178. (Enacted March 30, 1896.) \* \* \* All shares of stock in any national bank, corporation, association or company incorporated under the laws of this State, and belonging to any non-resident owner, and all other personal property located in this State belonging to any non-resident owner shall be valued and assessed to the owner thereof, in the assessment district in which said bank, corporation, association or company may have its principal place of business in this State, or in which said personal property may be so located; \* \* \* In valuing the stock or shares of, in any bank, company, association or corporation, the number of shares of such stock in such bank, company, association or corporation owned by the persons to whom the same are valued shall be stated, together with the respective taxable value of each, as ascertained by the State tax commissioner. \* \* \*

[Taxes levied on the shares of a corporation become a debt not affected by the insolvency of the corporation thereafter. *R. R. Co. v. Mercantile Co.*, 24 Atl. Rep. 778.]

§ 194. (Enacted March 30, 1896.) All bonds, certificates of indebtedness or evidences of debt, of whatsoever form made or issued by any public or private corporation, incorpo-

rated by or under the laws of this State, or of any other State, territory, district or foreign country, or issued by any State (except the State of Maryland), territory, district or foreign country, not exempt from taxation by the laws of this State and owned by residents of Maryland; and all certificates of indebtedness issued by any individual or firm, shall be subject to valuation and assessment to the owner thereof in the county or city in which such owners may respectively reside; and they shall be assessed and valued according to the rate of interest therein stipulated to be paid; that is to say, such of said bonds, certificates of indebtedness or evidences of debt as bear an interest of six per centum, shall be assessed at fifty per centum of their face value; such as bear an interest of five per centum, shall be assessed at forty-one and two-thirds per centum of their face value; such as bear an interest of four and a half per centum, at thirty-seven and one-half per centum of their face value; such as bear an interest of four per centum, at thirty-three and one-third per centum of their face value; such as bear an interest of three and one-half per centum, at twenty-nine and one-sixth per centum of their face value, and such as bear an interest of three per centum, at twenty-five per centum of their face value, and such as bear an interest at a rate not named in this section shall be assessed and valued at a correspondingly reduced valuation, if the rate of interest be less than six per centum, and at a correspondingly increased valuation, if the rate of interest be above six per centum, and such upon which no interest shall be actually paid, shall not be valued and assessed at all.

All shares of stock or shares in any bank, other than a national bank, or in any company or corporation incorporated by, or located in, and doing business in any other State, District of Columbia, or in any territory or foreign country owned by residents of this State, shall be valued and assessed, for the purposes of State, county and municipal taxation to the owner or owners thereof in the county or city in which such owner or owners may respectively reside; and the said shares shall be assessed and valued, provided that such company, corporation or bank was incorporated or located prior to the first day of January, eighteen hundred and ninety-six, according to the annual rate of dividend paid upon such shares of stock during the year preceding such assessment and valuation, that is to say, such of said shares of stock as paid a dividend during the said preceding year of six per centum shall be assessed at fifty per centum of their face value; such as paid a dividend of five per centum, shall be assessed at forty-one and two-thirds per centum of their face value; such as paid a dividend of four and one-half per centum, at thirty-seven and one-half per centum of their face value; such as paid a dividend of four per centum, at thirty-three and one-

third per centum of their face value; such as paid a dividend of three and one-half per centum, at twenty-nine and one-sixth per centum of their face value; such as paid a dividend of three per centum at twenty-five per centum of their face value, and such as paid a dividend during the year preceding said assessment, at a rate not named in this section, shall be valued, and assessed at a correspondingly reduced valuation, if the rate of dividend be less than six per centum, and at a correspondingly increased valuation, if the rate of dividend is above the six per centum, and upon which no dividend has been actually paid during the year preceding such assessment, shall not be valued and assessed at all.

And all assessors and other tax officials, whose duty it shall be by law to make or revise assessments or valuations of such securities as hereinbefore described, shall make such assessments or valuations in accordance with the provisions of this act, any law to the contrary notwithstanding.

§ 201. (Enacted March 30, 1896.) All bonds certificates of indebtedness, or evidence of debt, in whatsoever form, made or issued by any public or private corporation, incorporated by this State, or any other State or territory, district or foreign country, or issued by any State (except the State of Maryland), territory, district, or foreign country, not exempt from taxation by the laws of this State and owned by residents of Maryland, shall be subject to valuation and assessment to the owner thereof in the county or city in which such owners may, respectively, reside, and they shall be assessed at their actual value in the market; and such upon which no interest shall be actually paid, shall not be valued at all, and upon such valuation the regular rate of taxation for State purposes shall be paid, and there shall also be paid on such valuation thirty cents (and no more) on each one hundred dollars for county, city and municipal taxation in such county or city of this State in which the owner may reside. All shares of stock or shares in any bank, other than a national bank, or in any company or corporation incorporated by or located in or doing business in any other State, or District of Columbia, or in any territory or foreign country, owned by residents of this State, shall be valued and assessed for the purpose of State, county and municipal taxation, to the owners thereof, in the county or city in which such owners may reside, and said shares shall be assessed and valued at their actual value in the market, and upon which no dividend shall be actually paid, shall not be valued at all; and upon the valuation so made, the regular rate of taxation for State purposes shall be paid, and there shall also be paid on such valuation, thirty cents (and no more), on each one hundred dollars, for county, city and municipal taxation in such county or city of this State in which the owners may reside.



ARTICLE C.

Work, Hours of, in Factories.

- Sec. 1. More than ten hours' work per day of employes prohibited.  
 2. Special arrangements by contract for longer work, when permitted.  
 3. Penalty.

Section 1. No corporation or manufacturing company engaged in manufacturing either cotton or woolen yarns, fabrics or domestics of any kind, incorporated under the laws of this State, and no officer, agent or servant of such named corporation or manufacturing company, and no person or firm, owning or operating such corporation or manufacturing company within the limits of this State, and no agent or servant of such firm or person, shall require, permit or suffer its, his or their employes in its, his or their service, or under his, its or their control, to work for more than ten hours during each or any day of twenty-four hours, for one full day's work, and shall make no contract or agreement with such employes, or any of them, providing that they or he shall work for more than ten hours for one day's work during each or any day of twenty-four hours, and said ten hours shall constitute one full day's work.

§ 2. Any such named corporation or manufacturing company within the limits of this State shall be allowed, under the

provisions of this section, the privilege of working male employes, over the age of twenty-one years, over the limit of ten hours, for the express purpose only of making repairs and improvements, and getting fires made, steam up and the machinery ready for use in their works, which cannot be done during the limits of the ten hours, the extra compensation for all such work to be settled between such corporation and manufacturing companies and the employes; Provided, that nothing in this article shall be so construed as to prohibit any employer from making a contract with his male employes, over the age of twenty-one years, to work by the hour for such time as may be agreed upon.

§ 3. If any such corporation or manufacturing company within the limits of this State, or any officer, agent or servant of such corporation or manufacturing company in this State, shall do any act in violation of any of the provisions of this article he or they shall be deemed to have been guilty of a misdemeanor, and shall, on conviction thereof in a court of competent jurisdiction, be fined not less than one hundred dollars for each and every offense so committed, together with the cost of such prosecution, one-half of said fine to go to the informer and one-half to the school fund of the county in which said offense shall have been committed.

LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED  
 SUBSEQUENTLY TO 1888.

1. To provide for State taxation on the revenues of certain domestic corporations.
2. Same; certain foreign corporations.
3. To provide that no corporation shall be dissolved until all taxes are paid.

Act 1.

AN ACT to provide for State taxation on the revenues of railroad telegraph or cable, express or transportation, telephone, parlor car, sleeping car, safe deposit, trust, guaranty, fidelity, oil or pipe line, title insurance, electric light or electric construction companies incorporated under any general or special law of this State and doing business therein.

Section 1. Be it enacted by the general assembly of Maryland, That a State tax of one per centum be and is hereby levied annually upon the gross receipts of all railroad companies worked by steam incorporated by or under the authority of this State and doing business therein; a State tax of one per centum is hereby levied annually upon the gross receipts of every telegraph or cable express or transportation company incorporated under any general or special law of this State and doing busi-

ness therein; a State tax of two per centum is hereby levied annually upon the gross receipts of all telephone, parlor car, sleeping car, safe deposit, trust, guaranty and fidelity companies incorporated under any general or special law of this State and doing business therein; a State tax of one per centum is hereby levied annually upon the gross receipts of all oil or pipe line companies and all title insurance companies incorporated under any general or special law of this State and doing business therein, and one-half of one per centum upon the annual gross receipts of all electric light or electric construction companies incorporated under any general or special law of this State and doing business therein; if any such railroad company has part of its road in this State and a part thereof in another State or States, such company shall return a statement of its gross receipts over its whole line or road together with a statement of the whole length of its line in this State, and such company shall pay to the State at the said rates hereinbefore prescribed upon such proportion of its gross earnings as the length of its line in this State bears to the whole length of its line,

and similar statements shall be made by each oil or pipe line company and each sleeping car, parlor car, express, transportation or cable company, so that the proportion of said gross earnings of said companies respectively accruing from their business within this State may be accurately ascertained, or said ascertainment may be made in any other mode satisfactory to the State tax commissioner; the said gross receipt taxes shall be due and payable at the treasury on or before the first day of July in each year.

§ 2. And be it enacted, That it shall be the duty of each and every such corporation or company so doing business in this State on or before the fifteenth day of April next, and on or before the fifteenth day of April in each and every year thereafter to make a report under oath of its president, treasurer or other proper officer, to the State tax commissioner showing its total receipts or revenues accruing from business done in this State for the year ending on the preceding thirty-first day of January, and it shall be the duty of the State tax commissioner to file such report in his office, and on or before the first day of June next, and on or before the first day of June in each and every year thereafter, to calculate the State tax due from such corporation or company on its gross receipts or revenue aforesaid for such year, and to transmit the amount of such State tax to the comptroller of the treasury, to be collected and received into the State treasury as other State taxes are received into the treasury of this State.

§ 3. And be it enacted, That if any officer of any such corporation or company required to make a report as aforesaid shall in such report or return make a false statement he shall be deemed guilty of perjury, and if any such corporation or company so doing business in this State, shall neglect or refuse to make such report or return to the State tax commissioner within the time specified as aforesaid in any year, it shall be the duty of said tax commissioner to ascertain in any manner he may judge to be most available and certain, and to fix the amount of such gross receipts and revenues of such corporation or company for such year, and to calculate and assess the State tax on the amount of such gross receipts or revenues as so ascertained and fixed, and to transmit the amount of such tax to the comptroller in the same manner as if such corporation or company had made its report or return according to the provisions of this act, and it shall be the duty of such corporation or company to pay to the State treasurer the amount of such State tax on or before the first day of July in each and every year.

§ 4. And be it enacted, That it shall be the duty of the comptroller of the treasury to receive such accounts of State taxes so

transmitted to him by the State tax commissioner and forthwith to proceed to notify each such corporation or company of the amount such State tax by transmitting by mail to the president, treasurer or other proper officer of such corporation or company, an account of such State taxes, enclosed in an envelope or cover, having thereon a proper postage stamp, and carefully directed to such president, treasurer or other officer, and shall note in a book kept for that purpose the date of placing in the mail the envelope or cover containing such account; if no appeal be taken within thirty days from the date of such notification the said ascertainment and assessment shall be final, but any such corporation or company may within thirty days after such notification appeal from such ascertainment and assessment to the comptroller of the treasury and State treasurer, stating in such appeal the reasons and grounds for such appeal, and the said comptroller and treasurer shall as soon as possible consider the same, and if the comptroller and treasurer shall both be of opinion that such ascertainment and assessment of the State tax commissioner is erroneous and ought to be changed, they shall change the same accordingly and the ascertainment and assessment so agreed upon by the comptroller and treasurer shall be final; but if either the comptroller or treasurer shall agree with the tax commissioner as to the correctness of the ascertainment and assessment so made by him then the appeal shall be dismissed and the original ascertainment and assessment shall be and remain as the true ascertainment and assessment for such year.

§ 5. And be it enacted, That the State tax commissioner be and he is hereby authorized and empowered to examine under oath, to be by him administered, any officer or agent of any such corporation or company touching the business in this State of such corporation or company, and the receipts and revenues accruing therefrom, and any such officer or agent refusing to be sworn, or refusing to testify his or her knowledge touching the said subject-matter, shall forfeit and pay to the State of Maryland, the sum of five hundred dollars for each such refusal, to be recovered by action at law, in the name of the State, against such officer or agent in any court of this State having jurisdiction; the said State tax commissioner may also examine under oath any other person whom he may be advised or may believe has knowledge and information in the premises, and any such person refusing to be sworn or refusing to testify his or her knowledge in the premises, shall forfeit and pay to the State of Maryland, the sum of five dollars for each such refusal, to be recovered by action at law, in the name of the State, against

such persons so refusing, before a justice of the peace having jurisdiction; and it shall be the duty of the State's attorney of the county or city where such refusal has occurred on the information of the State tax commissioner, to bring suit for the recovery of such forfeitures as often as they may have occurred.

§ 6. And be it enacted, That if any such corporation or company from whom such taxes shall be due and payable on its gross receipts or revenues as aforesaid, shall fail or neglect to pay the same to the treasurer of the State for the space of one month after the same shall be due and payable as aforesaid, such corporation or company shall for such failure or neglect forfeit and pay to the State of Maryland an additional amount of five per centum as penalty or damages, to be added to the said taxes so due and unpaid, and it shall be the duty of the comptroller to add the same to the said account, and forthwith to make out said account and certify the same under the seal of his office, and to cause suit to be brought for said taxes in the circuit court for the county where the principal office of such corporation or company is located, or in the superior court of the city of Baltimore, the court of common pleas or the Baltimore city court, if such principal office be located in the said city, and the said suit shall stand for trial at the first term after the service of the writ shall have been made on such corporation or company, and service of the writ aforesaid on any officer, agent or employee of said corporation or company, shall be deemed and taken as sufficient service on such company.

§ 7. And be it enacted, That if upon the return of the writ issued against such corporation or company, and the said corporation or company being duly summoned as aforesaid, such corporation or company shall fail to appear by attorney or agent upon the first of the docket, it shall be the duty of the court to cause the personal appearance of said corporation or company to be entered, and the cause shall stand for trial or hearing and shall proceed and judgment shall be rendered as if such corporation or company had appeared by attorney, and if such corporation or company shall appear by attorney or agent, and either party shall desire or require a trial by jury, it shall be the duty of the court to cause issues to be framed, and a jury to be empaneled for the trial thereof, and if the verdict of the jury shall be for the State, judgment shall be entered without stay for the amount of taxes so due as aforesaid, and the five per cent. additional as damages with interest and costs, and a fee of fifty dollars shall be allowed the attorney for the State to be taxed in the plaintiff's costs in said suit, and execution shall be issued on such judgment if the same be not paid into the treasury within thirty days after the rendition thereof.

§ 8. And be it enacted, That the certificate of the comptroller under the seal of his office, of the amount of taxes so due as aforesaid, and of the said penalty or damages shall be prima facie evidence to entitle the State to judgment for said amount of State taxes, and said penalty or damages in any case in which suit may be brought for the recovery of such State taxes as aforesaid.

§ 9. And be it enacted, That this act shall take effect from and after the date of its passage, and all acts or parts of acts in conflict herewith be, and the same are hereby repealed.

(Approved April 8, 1890.)

[Held, that this act applies to all corporations created after April 8th, as well as to those formed since January 1st and before April 8th. *Park Co. v. State*, 80 Md. 448; s. c., 31 Atl. Rep. 298.]

## Act 2.

AN ACT to provide for State taxation on the revenues of certain foreign corporations mentioned in this act, accruing from business done in the State of Maryland.

Section 1. Be it enacted by the general assembly of Maryland, That every telephone company, electric light or electric construction company, parlor, palace or sleeping car company, oil or pipe line company, guano, phosphate or fertilizer company, incorporated by or under the laws of the United States, or of any other State or Territory of the United States, or of any foreign country, and wishing to do business in the State of Maryland before proceeding to transact any business in this State, either through an individual agent or agents, or through the agency of any corporation organized under the laws of this State, or to open any office for the transaction of any business in this State, shall first file in the office of the State tax commissioner a certified copy of the charter, certificate or act of incorporation, under which it claims the power to transact business as a corporation, and shall also file in the office of the secretary of State of Maryland, a certificate of the appointment by such company or corporation, of at least two agents to reside in this State, upon whom legal process issued out of any court of this State, may at any time be served in any action, at the suit of the State of Maryland, or of any county or incorporated city or town of this State, or of any citizen or citizens of this State, or of any corporation organized under the laws of this State, which certificate shall state fully the names of the agents to reside in this State and shall be certified by such foreign corporation, under the seal of such foreign corporation and the signature of its president or other proper officer, and shall when received by the secretary of State be recorded by him in a book to be kept for that purpose, from which record

## Taxation of revenues of foreign corporations — Act, April 8, 1890.

the said secretary of State shall be able to certify the appointment of such agents at any time; at the time of receiving such certificate the secretary of State shall give to such company a receipt for such certificate, which receipt shall enable such foreign corporation to commence business in this State.

§ 2. And be it further enacted, That any person or any officer of any such corporation who shall presume to act as agent or employe of any such foreign corporation, or to open an office for the transaction of the business of any such foreign corporation, by employing or using the patent rights, plant or property of such foreign corporation in this State in any manner as renter or bailee, or in any other manner under any contract with such foreign corporation before the provisions contained in the first section of this act have been complied with, shall forfeit and pay to the State of Maryland the sum of one hundred dollars for each and every day he may act as such agent or employe, or may occupy such office for the transaction of such business, before such provisions of the first section of this act shall have been complied with by such foreign corporation, and it shall be the duty of the State's attorney of the city or county in which such business is transacted, or is proposed to be transacted, to prosecute and recover such penalty, and it shall be the duty of the State tax commissioner to inform the State's attorney of any violation of this act of which he may be advised, and to require him to proceed to recover the penalty for such violations as prescribed in this act.

§ 3. And be it further enacted, That each and every such foreign corporation or company shall on or before the fifteenth day of April next, and on or before the fifteenth day of April in each year hereafter, make a report under the oath of its president, treasurer or other proper officer to the State tax commissioner, setting forth and showing the total gross receipts in this State of such corporation or company for the year ending on the preceding thirty-first day of December, either from business done in this State on its own account or through its individual agent or agents or from royalty on its patent rights, plant or property employed or hired or rented by any person or persons in this State, or by any corporation organized under the laws of this State, under any contract with such foreign corporation, or from business done in this State by any corporation organized under the laws of this State, and of which such foreign corporation may be a stockholder, and which may be employing in any manner or under any contract with such foreign corporation, and using the patent rights, plant or property of such foreign corporation for profit in this State.

§ 4. (Repealed and re-enacted March 30, 1892.) And be it further enacted, That every such telephone company shall pay to the State treasurer a tax of two per centum upon the gross amount of its receipts in this State, each such oil or pipe line company shall pay to the State treasurer a tax of one per centum upon its gross receipts in this State; that each such electric light or electric construction company or corporation shall pay to the treasurer of the State a tax at the rate of one-half of one per centum on the amount of gross receipts or revenues of such corporation in this State; that each parlor, palace or sleeping car company shall pay to the State treasurer a tax at the rate of two per centum upon the gross receipts of such corporation or company in this State; that each such guano, phosphate or fertilizer company shall pay to the State treasurer a tax at the rate of one-half of one per centum upon the amount of the gross receipts of such company so returned or ascertained as provided for in this act. If any such oil or pipe line company has part of its transportation line in this State, and part thereof in another State or States, such company shall return a statement of its gross receipts for transportation of oil or petroleum over its whole line, together with a statement of the whole length of its line and the length of its line in this State, and such company shall pay to this State at the aforesaid rate upon such proportion of its said gross receipts as the length of its line in this State bears to the whole length of its line; if any such parlor, palace or sleeping car company uses or permits the use of its cars on any railroad, part of which is in this State and part thereof in another State or States such company shall return a statement of its gross receipts accruing from such use over the whole line of road or roads on which its cars are so used with a statement of the whole length of such lines together with a statement of the length of such lines in this State, and such company shall pay to the State at the said rates hereinbefore prescribed upon such proportion of its gross earnings as the length of the lines so used by it in this State bears to the whole length of the lines so used by it so that the proportion of said gross earnings of said companies respectively accruing from their business within this State may be accurately ascertained, or said ascertainment may be made in any other mode satisfactory to the State tax commissioner.

§ 5. And be it further enacted, That upon the receipt of such report by the State tax commissioner of the gross receipts in this State of any such foreign corporation or company, the said State tax commissioner shall cause the same to be filed in his office, and shall on or before the first day of June in each year calculate the amount of gross

## Taxation of revenues of foreign corporations — Act, April 8, 1890.

receipt tax to be paid by the said foreign corporation or company at the rate hereinbefore mentioned, to the treasurer of the State, and shall send the said amount due to the State to the comptroller of the treasury to be received as other State taxes are now received into the treasury of this State.

§ 6. And be it further enacted, That if any officer of any such company or corporation required by this act to make a return as aforesaid, shall in such return make a false statement, he shall be deemed guilty of perjury; if any such corporation shall neglect or refuse to make such return within the time limited as aforesaid, the State tax commissioner shall ascertain by any means which he may find most practicable and available, the amount of such gross receipts and shall fix the amount of the same for the year, and unless altered upon appeal by the State board of appeal as herein-after provided, such amount so fixed by him shall stand as the basis of taxation of such corporation for such year under this act.

§ 7. And be it further enacted, That the State tax commissioner be and he is hereby authorized and empowered to examine upon oath any officer, agent or employe of any such foreign corporation in this State, or any officer of any corporation of this State which may employ or use in any manner the patent rights, plant or property of any such foreign corporation for profit in this State, touching the said business and the gross receipts in this State accruing from the same, and any such officer, agent or employe refusing to be sworn, or refusing to testify in the premises, or to give the information asked for by said State tax commissioner, shall forfeit and pay to the State of Maryland the sum of five hundred dollars for every such refusal; the State tax commissioner is also hereby authorized and empowered to examine upon oath any person whom he may be advised has information and knowledge touching such business and the gross receipts accruing from the same in this State, and any such person refusing to be sworn or refusing to testify in the premises, shall forfeit and pay to the State of Maryland the sum of five dollars for every such refusal.

§ 8. And be it further enacted, That when the State tax commissioner shall have ascertained the amount of the gross receipts of any such foreign corporation doing business in this State, and the amount of State tax on the same, he shall on or before the first day of June in each year cause an account of the same to be filed or placed in the office of the comptroller of the treasury, and the comptroller of the treasury shall proceed at once to notify the president, treasurer or other officer or agent of such foreign corporation doing business in this State, of the amount of State tax due from such corporation, by transmitting to such

president, treasurer or other proper officer or agent of such foreign corporation, an account of the State taxes due from such foreign corporation, by mail under cover having thereon a proper postage stamp, and plainly directed to such president, treasurer or other officer or agent of such foreign corporation; and shall note in a book the date of placing in the mail the envelope or cover containing such account; if no appeal be taken within thirty days from such transmission, the said assessment shall be final; but any such corporation may, within thirty days from such notification, appeal from such assessment to the comptroller of the treasury and State treasurer, stating in such appeal the reasons and grounds of such appeal, and said comptroller and treasurer shall consider the same, and if after full hearing the said comptroller and treasurer shall both be of opinion that such assessment and ascertainment so made by said State tax commissioner is erroneous and ought to be changed, they shall change the same accordingly, and the assessment so agreed upon by the comptroller and treasurer shall be final; but if either the comptroller or treasurer shall agree with the State tax commissioner as to the correctness of the assessment and ascertainment so made by him, then such appeal shall be dismissed and the original assessment and ascertainment shall be and remain as the true assessment and ascertainment of such gross receipts and the State tax on the same for said year.

§ 9. And be it further enacted, That if any such corporation or company shall neglect or refuse to pay to the State treasurer the tax imposed by this act for the space of sixty days after the amount of such tax has been so finally ascertained and determined and has been so transmitted by mail to its president or other officer as directed in this act, such corporation shall for such offense forfeit and pay to the State of Maryland an additional amount of ten per centum as penalty or damages to be added to the said taxes so due and unpaid, and it shall be the duty of the comptroller to add the same to the said account, and forthwith to make out said account and certify the same under the seal of his office, and to cause suit to be brought for said tax in the circuit court of the county where the principal office of the said corporation in this State is located, or in the superior court for Baltimore city, if such principal office be located in said city, and the said suit shall stand for trial at the first term, after service of the writ shall have been made on said corporation or company, and service of the writ aforesaid on any officer, agent or employe of such corporation, shall be deemed and taken as a sufficient service on such corporation.

§ 10. And be it further enacted, That if

Taxation on revenues of foreign corporations; dissolution — Acts, Apr. 8, 1890, Apr. 7, 1892.

upon the return of the writ issued against such corporation, and such corporation being duly summoned as aforesaid, such corporation shall fail to appear by attorney or agent upon the call of the docket, it shall be the duty of the court to cause the personal appearance of said corporation to be entered, and the cause shall stand for trial on hearing, and judgment shall be rendered as if the said corporation had appeared by attorney; and if such corporation shall appear by attorney or agent, and either party shall desire a trial by jury, it shall be the duty of the court to cause issues to be framed, and a jury to be empaneled for the trial thereof; and if the verdict of the jury shall be for the State, judgment shall be entered without stay, for the amount of tax so due as aforesaid, and ten per cent. additional as damages, with interest and costs, and a fee of fifty dollars shall be allowed the attorney for the State, to be taxed in the plaintiff's costs in said suit, and execution shall be issued on said judgment, if the same be not paid into the treasury within twenty days after the rendition thereof.

§ 11. And be it further enacted, That the certificate of the comptroller, under the seal of his office, of the amount of tax so due and damages as aforesaid, shall be

prima facie evidence to entitle the State to judgment for said amount, and said penalty or damages as charged.

§ 12. And be it further enacted, That this act shall take effect from and after the date of its passage.

(Approved April 8, 1890.)

See Const., art. III, § 58.

### Act 3.

AN ACT providing that no corporation shall be dissolved by decree of any court of this State until all taxes due the State shall be fully paid or adjusted.

Section 1. Be it enacted by the general assembly of Maryland, That no corporation, made taxable by any law of this State, shall hereafter be dissolved under the decree of any court of this State until all taxes due the State have been fully paid or adjusted and the certificate of the comptroller of the treasury to this effect filed in the proper court with the proceedings of dissolution.

§ 2. And be it enacted, That this act shall take effect from the date of its passage.

(Approved April 7, 1892.)

See G. L., art. XXIII, § 276.

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